SOME

NEW CASES

OF THE

Years and time of King *Hen.* 8. *Edw.* 6. and Qu: *Mary*;

Written out of the Great

Abridgement,

Composed by

Sir ROBERT BROOK,

KNIGHT &c.

There dispersed in the Titles, but here collected under years.

And now Translated into English by JOHN MARCH *of* Grays-Inn, *Barrister.*

All which said Cases are by the Translator Methodised, and reduced Alphabetically under their proper Heads and Titles.

With an exact Table of the principall Matter contained therein.

London, Printed by *T. N.* for *Richard Best*, and *John Place*, and are to be sold at *Grays-Inn gate*, and *Furnivals Inn-gate* in *Holborn*, 1651.

FH
MVSEVM
BRITANNICVM

To the READER.

READER,

WHEN I considered what great care our *Parliament* had taken of the *publick* good; in enacting our Laws

laws to be translated into English, then which, certainly nothing more equall, that the people might in some measure instruct themselves in that to which they are bound to obedience; and of which by the Law it selfe, they cannot, nor must not plead ignorance. And when I had likewise considered the excellent, and most use-

uſefull Law that is contained in this little volume called *Petty Brock*; I thought it a labour ſervicable to the publick to Tranſlate it, which I here preſent you in your own Language: make uſe of it, and you will finde *Magnum in parvo*, great benefit in this little work; and I doubt not give him thanks for it, who is ambitious of

To the Reader.

nothing more then to be yours, and the Common-wealths

most Faithfull

Servant,

Jo: March.

THE

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Abridgment.

HOlden by the *Prothonatories* of the *Common Bench* in Treſpaſs of Battery; That of ſuch matters which lie in Conuſance of the Juſtices; they may increaſe dammages after a Verdict upon Iſſue; otherwiſe of ſuch matter which lies not in their Conuſance; as Trees cut. But yet there they may increaſe coſts. 3. *Mar.* 1. *B. Abridgement*, 36. the end. 3 H.4.4. by *Rede*. by imparlance in Court 34 H.8.138 3.H.4.4. by *Thirn*. 19.H.6.42.

Acceptance.

Note, By *Fitzjames* and *Engleſield*, Juſtices: if Tenant in Dower Leaſes for years, rendring rent, and dies, the Leaſe is void; and acceptance by the Heir of 24.H.8.54. See Tit. Leaſes.

the Rent will not make the leaſe good for twas void before: otherwiſe of voidable Leaſes. 22. *H.*8.*B. Acceptance*, 14.

If Tenant in Taill Leaſes his land for twenty years, rendring rent, and dies, and the Leſſee leaſes to another for ten yeares, and the iſſue accepts the rent of the ſecond Leſſee, this is no affirmance of the Leaſe: for there is no privity between the ſecond Leſſee and him; contrary, if he paies it as Bayliff of the firſt Leſſee; and *B.* ſeems if the firſt Leſſee had Leaſed over all his Term in parcel of the land let, and this Aſſignee paies the rent to the iſſue in tail, that this affirms the entire Leaſe: for Rent upon a Leaſe for years, is not apportionable. 32.*H.*8.*B. Acceptance*.13.

Tenant in Tail, the Remainder over Leaſes for years, rendering Rent, and dies without iſſue, he in the Remainder accepts the rent: this ſhal not binde him; becauſe that when the tail is determind, all that is compriſed within it is determined, and ſo the Leaſe void, and he in the Remainder claims not by the Leſſor. 1. *E.* 6. *B. Acceptance* 19.

Biſhop Leaſes Land of his Biſhoprick for years, rendering Rent, and dies; the Succeſſour accepts the Rent; this ſhall binde

binde him; for the Biſhop hath a Fee-ſimple, and may have a Writ of Entry *Sine aſſenſu capituli*: otherwiſe in caſe of a Parſon or Prebend, who can have but a *Juris utrum*. 2. *E.* 6. *B. Acceptance.* 20. See Tit. Leaſes.

If a man be bound in an obligation to pay ten pound to the Obligee at *Paris* beyond Sea at a certain day, if the Obligor pay at another place, and the ſame day in *England*, and the other accepts it, tis good clearly. 38. *H.* 8. *B. Conditions.* 206. Jay accords 11. H. 7. 17. 34 H. 6. 18. by *Briſot*, 19. E. 4. 1. by *Catesby*.

Acceptance of Rent by the Lord from the diſſeiſor of the Tenant, ſhall not bar him of his eſcheat: otherwiſe if he had avowed for it in Court of Record, *&c.* See *Tit. Eſcheat.*

Action popular.

Note, By the Statute the party which ſues an Action Popular, ought to ſue it within the year after the offence done, and not after: and this as well of offences done againſt the Statute then made, as againſt Statutes after to be made; ſo ſee that it goes to a Statute after made. *B. Action Popular.* 6. 7 H. 8. c. 3.

Action upon the Caſe.

If I have a Mill in *B.* and another

Agrees Newton 22 H.6.15. 11.H.4 47. by *Hank.*

makes another Mill there by which I lose my Toll by going of divers to it, yet no Action lies: otherwise, if the Mill disturb the water from coming to my Mill; there I shall have an Action upon my Case. 24. *H.*8. *B. Action upon the Case.* 42. the end.

In an Action upon the Case where the Plaintiff delivers goods to the Defendant, and the Defendant for ten shillings promises to keep them safe, and does not, to the dammage, *&c.* And by *Fitzherbert* and *Shelly* Justices, *Non habuit ex deliberac'*, is a good Plea. 26: *H.*8. *B. Action upon the Case.* 103.

30 H:8. 27. 27 H.8.22. Petty Br.

Note, in an Action upon the Case betwixt *Awsten* Plaintiff, and *Thomas Lewis* Defendant, for calling him false and perjured; he justifies, because that the Plaintiff was perjured in the *Star-chamber* in such a matter, *&c.* and a good Plea by the Court. 28. *H.* 8. *B. Action upon the Case.* 3. more of this in the next.

28 H.8.85

Action upon the Case for calling the Plaintiff false perjured man; the Defendant justifies that such a day and year in the *Starchamber* the Plaintiff was perjured, and pleaded certain in what, *&c.* for which he called him false perjured

jured man, as afore, as twas lawful for him: and a good Plea by the Court in the *Common Bench.* Wherefore the Plaintiff ſaid of his own wrong, without that he ſwore in manner and form, *&c.* 30. *H.*8. *B. Action upon the Caſe.* 104.

If a man bring debt of 10. l. the Defendant wages his Law: and after the Plaintiff brings an Action upon the Caſe againſt the ſame Defendant, that he promiſed to pay the 10. l. *&c.* The Defendant may plead that for the ſame ſumm the Plaintiff brought before an Action of Debt, in which the Defendant waged his Law, Judgement, if Action. And a good Plea, for he was once barred of the ſame ſumm. And in Action upon the Caſe, that the Defendant promiſed to pay 10. l. to the Plaintiff, which he ought to him for a Horſe, and a Cow, the Defendant may ſay, That he promiſed to pay 10. l. to the Plaintiff, which he did ow to him for a horſe, which he bought of him, which ſumm he hath paid to the Plaintiff without that that he promiſed to pay 10. l. which he did ow to the Plaintiff for one Horſe, and one Cow, as *&c.* Or without that that he did ow to the Plaintiff 10. l. for a Horſe and a Cow, as *&c.* 33. *H.* 8. *B. Action*

upon the Case. 105.

3 M. 1. agrees. Action upon the Case, for that the Defendant found the Goods of the Plaintiff, and delivered them to persons unknown there; that he did not deliver them in manner and form, is no plea, without saying not guilty where the thing rests in doing. And if the Action were, That whereas the Plaintiff was possessed, *&c.* as of his proper goods, and the Defendant found them, and converted them to his proper use, tis no Plea that the Plaintiff was not possessed as of his proper Goods, but he shall say not guilty to the misdemeanour, and shall give in evidence that they were not the goods of the Plaintiff: and yet tis true, not guilty against him. 33. *H.* 8. *B. Action upon the Case.* 109.

2 E 6. and see 4 E. 6. after under this title. In an Action upon the Case, that the Goods of the Plaintiff came to the hands of the Defendant, and he wasted them, the Defendant saies that they came not to his hands, *&c.* and a good Plea, and gives in evidence that they were not the proper goods of the Plaintiff. 34. *H.* 8. *B. Action upon the Case.* 103. the end.

See 33 H 8 before. Action upon the Case was brought in *London* by *A. B.* that whereas he was

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poſſeſſed of certain wine and other ſtuff (and ſhews in certain) in ſuch a ſhip, to the value, *&c.* and doth not ſhew the place certain where he was thereof poſſeſſed, and yet good. And alledged that the Defendant ſuch a day, year, and place in *London*, promiſed for 10. l. That if the ſaid ſhip and Goods did not come ſafe to *London*, and put upon the Land, that then he would ſatisfie to the Plaintiff 100.l. and that after the ſhip was robbed upon the Trade on the Sea, for which he brought the action for not ſatisfying: and the truth was, that the bargain was made beyond ſea, and not in *London*. But in an action upon the Caſe upon an Aſſumpſit and the like, wch is not local, the place is not material (no more then in debt) for he alledged that the ſaid goods in the pariſh of S. *Dunſtons* in the Eaſt *London*, before they were ſet to land, or *&c.* were carried away by perſons unknown, *&c.* and the action lies well in *London*, though they were periſhed upon the high ſea. 34. *H.* 8. *B. Action upon the Caſe.* 107.

2 Mar. 1. 451. Time, El: 8. 366. Petty Br.

'Twas agreed, That an Action upon the Caſe doth not lie againſt the Executors, upon the Aſſumpſit of the Teſtator, though they have aſſets. 37. *H.* 8. *B.*

5 M. 1. Com. 182. 9 Rep. 87. &c. Pinchons caſe cont.

Action upon the Case. 4. the end.

See 33 H8. before. In an Action upon the Case for a thing which lies in Feasans, as for burning of Goods or Deeds, and the like, not guilty is a good plea: contrary, for *non Feasans* of a thing which he ought to do; as to make or repair a Bridge, House, Park, Pale, scouring a Ditch, and the like, and doth it not, there not guilty is no plea. 2. *E.* 6. *B. Action upon the Case.* 111.

Action upon the Case for calling the Plaintiff false Justice of Peace, *vel his similia*, these words (*his similia*) were ordered to be struck out of the book by the Court, for the incertainty. 4. *E.* 6. *B. Action upon the case.* 112.

Action upon the Case whereas the Plaintiff was possessed of such Goods, as of his proper Goods, and lost them, and the Defendant found them, and conver them to his own use: the Defendant said, That the Plaintiff pledged them to him for 10. l. by reason of which he detains them for the said 10. l. as tis lawfull for him, without that that he converted them to his own use, as *&c.* and a good plea by some. By others he must plead not guilty, and give this matter in evi-

See. 33 H8. before. dence for the Detainer, 4. *E.* 6. *B.*

Action

ction upon the Case. 113.

Twas agreed in the *Common-Bench*, hat if a man for marriage of his aughter, assumes to pay 20. l. a year Easter, for four years, and fails two ars, that the Plaintiff may have an Aion upon the Case upon the promise r the *non payment* of the two years, ough the other two years are not et come; for this is in nature of Covenant. 4. *M.* 1. *B. Action upon the Case.* 98. the end.

Action upon the Statute.

In an Action upon the Statute of 8. *H.6.* of forcible entry. Or in Trespas upon 5. *R.*2, *Ubi ingressus non datur per legem, Non ingressus est contra formam statuti*, is a good plea: but his free-hold is no plea, as tis said by *Sherwood* and others. 23. *H.*8. B. *Action upon the statute.* 40. See 24 H. 8 after.

In Trespas upon 5. *R.* 2. to say that the place, *&c.* is the Free-hold of *I. N.* and hee by his commandment entred, is no plea,: for the action is given by the Statute, and therefore ought to have a special answer, and not as in a general Writ of Trespas. 24. *H.* 8. B.

B. Action upon the ſtatute. 15.

21 H. 8: c: See by *Fitz.* Juſtice, That a man may avow upon the Land by the new Statute and then the Tenant ſhall not diſclaim contrary, if he avow by the Common Law, and relinquiſh the ſtatute, 28. *H.* 8. B. *Action upon the Statute.* 6.

See 27 H: 8:26: & 2 E:4:6: 'Twas ſaid for Law, That tis no plea in Treſpaſs upon the Statute of 5. *R.* 2. for the Defendant to ſay, That the place where is twenty acres which is parcel of the Mannour of *B.* is his Free-hold. For the Defendant ought to entitle him to a Lawfull entry: for a Diſſeiſor hath a Free-hold, and yet *ingreſſus eſt, ubi ingreſſus non datur per legem*, in the time of *H.* 8. *B. Action upon the ſtatute.* 27.

Account.

Account lies not againſt Diſſeiſors, for then the Diſſeiſee ſhall avoid the diſcents at his pleaſure: and alſo the Defendant was never his Receiver for to render account, for this cannot be without privity in Law, or in Deed; as by Aſſignment, or as Guardian, or the like: or by pretence the Defendant to the uſe of the Plaintiff, and where the Defendant

ant claims to his own uſe, there the lea is true; neither his Receiver, nor his Baily, to render account: 2 *Mar.* 1. B. *Account* 89.

Adjournment.

The Juſtices of Aſſiſe may adjourn the Aſſiſes upon every demurrer, and upon every dubious plea or Verdict; and upon every foraign plea, and to what place they will; and adjournment may be upon Certificate of the Aſſiſes, as well as upon the aſſiſe. B. *Adjournment* 28.

Adminiſtrators.

Debt is brought againſt the Ordinary, who pending the Writ, commits the adminiſtration to *J.S.* the firſt Writ ſhal abate: for the Ordinary is compellable to commit the Adminiſtration, by Statute, 34. *H.*8. *B. Adminiſtrators* 39. 31 E. 3. ca. 11. Raſt: Adminiſt. 1. 21 H:8: ca'. 5. Raſt: Probat of Teſt: 3.

Nota, per omnes legis peritos, and by thoſe of the Arches, that at the time of vacation of an Archbiſhoprick, or Biſhoprick, the Dean and Chapter ſhall commit the adminiſtration, 36. *H.*8. *B. adminiſtrators* 46.

Nota, where the Ordinary commits the adminiſtration, he may revoke it, and 27 H:8. 26 by Fitz.

4 H: 7. 14. by Trema: See 5 E: 6. after.

and commit it to another (but mean acts done by the first administrator shall stand) and so 'twas put in ure between *Brown* and *Shelton*, for the goods of *Rawlins*; the administration was committed to *Brown*, and revoked and committed to *Shelton*: for 'tis not an interest, but a power or authority; and powers and authorities may be revoked; *contra* of an interest certain. In the time of *H.* 8. B. *administrators* 33. the end.

Charles Brandon Duke of Suffolk, had issue sonn by one *Venter*, and daughter by another *Venter*, and devised goods to the son, and dyes, and after the son dyes intestate, without Wife and Issue; and the mother of the son who was of the second *Venter* (for the daughter was of the first *Venter*) took the administration by the Statute; which is, That the administration shall be committed to the next of kinn of the intestate. And upon great argument in the Spirituall Court, *Tam per legis peritos regni, quam per peritos legis civilis*, the administration was revoked. And so see that the administration may be revoked; and so 'twas likewise in the case of *Brown* and *Shelton* before, of the goods of *W. Rawlin* Clerk, which was committed,

21 H: 8. c. 5 Rast: Administ: 1.

ted to Sir *H. Brown*, who marryed the ſiſter of the ſaid *Rawlins*, and after came W. S. and J. S. ſon of the Wife of the ſaid Sir *H.* (which Wife was the mother of the ſaid *Shelton* by a former Husband) and reverſed the firſt administration, and obtained the adminiſtration to them. And the ſaid Duke had iſſue *Frances* by the French Queen; and after this Wife dyed, he marryed the daughter of the Lord *Willoughby*, and had iſſue by her one *Henry*, and dyed; and after *Henry* dyed without iſſue, and without Wife, and the mother of the Heir took the Adminiſtration; and after the ſaid *Frances* Wife of the Marqueſs of *Dorſet* ſued, and reverſed the adminiſtration, and obtained the adminiſtration to her ſelf, though ſhe were but ſiſter of the half blood to the ſaid *Henry*, becauſe that ſhe is next of kinn to the ſaid *Henry*, for that *Henry* had not any Children; for the mother is not next of kinn to her own ſon in this reſpect of this matter; for it ought to goe by diſcent, and not by aſcenſion, by the Law of England, nor by the Law civill. And the children are *de ſanguine patris & matris*, *ſed frater & mater non ſunt de ſanguine puerorum.* And

by

by Isidore, *Pater & mater & puer sunt una caro*; and therefore no degree is betwixt them; contrary between brother & sister; and the half blood is no impediment as to goods (B. *administrators* 47.)

Note, that in the argument of this case, 'twas agreed by the Justices, that the King is not intitled to the land of his Ward, without office, though he hath but a Chattel in it, yet it comes *ratione tenuræ*, which is the Seigniory and Freehold in the King, 5 *E.* 6. B. *Office before*, &c. 55.

3 Eliz. Com: 229:

Age.

A man recovers Rent and arrearages by assise, Or if he recovers an annuity and arrearages of it in a Writ of annuity, the Defendant dyes, the Plaintiff brings a *Scire facias* against the heir, he shall not have his age of the arrearages, for they are reall, and parcell of the rent or annuity. But if the Judgment be of arrearages and dammages, there he shall have his age (B. *age* 50.) And where he recovers in a Writ of annuity, or assise, as before: Or hath avowed for a Rent, which is Freehold, and recovers the arrearages without costs and damages, he shall not have an action of Debt

Kirton agrees 43 E. 3, 2, 15.

Debt of that, but a *Scire facias*, for tis real. But where he hath Judgement of it, with coſts and dammages which go together, ſo that that tis mixt with the perſonality, then lies a Writ of Debt againſt the Heir, of the arrearages and dammages (and this B. thinks in default of Execution) *per curiam*, 23. *H.* 8. *B. Debt*, 212. *& age* 50.

Note, That of the Land of the *Duchy* of *Lancaſter*, and other Lands which the King hath as Duke, or the like, his age is material, and he may have his age as another common perſon may; for he hath them as Duke, not as King (B. *Age* 52. *&* 78.) As if the King alien Land, parcel of his *Dutchy* of *Lancaſter* within age, there he may avoid it for *Non-age* for the reaſon aforeſaid: otherwiſe of Land which he hath as King, for the King cannot be diſabled by *Non-age*, as a common perſon ſhall (B. *Prerogative*. 132.) Yet by the *Statute* of 1. *E.* 4. (which is a private act not printed, but inrolled in the *Dutchy Chamber*, by which King *H.* 6. was attainted of Treaſon, and that all the Lands of the ſaid *Dutchy* ſhould be forfeited, and ſhould be a *Dutchy* ſeparated and incorporated, *&c.*) tis annexed to the Crown:

4 El. Com: 213. 221. Com.

Com. ibid: See the Stat. Com: 218.

How ſeperated, See Com: 219: & 230. See this Act, Com. 214.

Crown: but by another private act, 1. *H.*7. tis disannexed, and made as in the time of *H.*4. 1. *E.*6. B. *Age.* 52.

Note, twas in a manner granted by all the Justices in the *Common Bench*, That if a Parson, Prebend, or the like be within age of 21 years, and makes a Lease of his Benefice within age, that yet this shall binde him: for where he is admitted by the Law of holy Church to take it within age, so the Common Law inables him to Demise his Benefice within age. 4. *Mar.* 1. B. *Age.* 80.

Alienations.

See 29H.8. If the Tenant of the King alien in Fee without licence, and die, his Heir within age, the King shall not have the Ward, because that nothing is discended to him, and that the Alienation is good, save the Trespass to the King, which is but a Fine by Seiser. B. *Alienations* 25. *Gard* 85. But otherwise if the Alienor were Tenant in Tail; and if the Alienation without licence be found by office, the King shall have the Issues of the Land from the time of the Inquisition taken, and not before. (B. *Alienations* 26. *in medio.*) But where the Tenant

See 33H.8. 8 E.4.4. by Coke, Stp. 84:

Tenant dies, and his Heir enters upon an office found for the King, of the dying ſeiſed of the Anceſtor, there the heir ſhall anſwer the profits taken by him before. 26. *H.* 8. *B. Intruſion* 18. *the end.* 8.E.4.4.by Choke.

Tis ſaid for Law, That a fine for alienation is one years value of the land aliened: and the ſame Law of a Fine for intruſion upon the King. But the Fine to have licence to alien, is but the third part of the yearly value of the land which ſhall be aliened: and for licence to alien in *Mortmain*, the Fine is the value of the Land for three years. 31. *H.* 8. *B. Alienations.* 29. the end See 29H.8.

If a man obtain licence to alien the Mannor of D. and all his Lands & Tenements in D. he cannot alien by Fine: for the Fine ſhall be certain: ſo many acres of Land, ſo many of Meddow, ſo many of Paſture, and the like: and the alienation ought not to vary from the Licence. Yet by B. tis otherwiſe uſed with an averment, that all is one. 32. *H.* 8. B. *Alienations.* 30. 46.E.3.45. by Perſay.

Note, if there be two Joynt-tenants who hold of the King *in Capite*, and one releaſes to the other all his right, this is no alienetion; nor doth he need 40 E.3.41. By Thorp.

Licence, or pardon of it: for he to whom the Releaſe is made, is in by the firſt feoffor, and not by him that releaſed: nor ſhall he Fine for ſuch releaſe: and ſo tis uſed in the *Chequer*, that tis no alienation. But if three Joynt tenants are, and the one Releaſes to one of the others, there he is in of it by him that releaſes: *Contra*, if he had releaſed to all his compagnions: and where a man Releaſes by Fine to the Tenant of the King, this is no alienation. Otherwiſe of a Fine *Sur Conuſans de droit Com ceo*, &c. for this is an eſtate made by Concluſion. 37. *H.* 8. *B. Alienations* 31.

Stp. 30. cont. 33 H. 6. 5. by Wangf. Lit. 68.

Tenant of the King *in Capite* cannot alien for term of life without Licence: for it alters the Freehold. *Time H.* 8. B. *alienations* 22. the end.

45 E. 3. 6.

Note, That for Burgage Tenure of the King, a man may alien without licence well enough. 6. *E.* 6. B. *Alienations* 36.

Note, That a Deviſe by Teſtament was taken to be an alienation. 3. Mar. 1. B. *alienations* 37.

Alien. See Tit. Denizen.

See 1 E. 6. next after.

Note, by the whole Court in the *Kings*

Kings Bench an alien may bring an action perſonal, and ſhall be anſwered without being diſabled, becauſe he is an alien born: otherwiſe in an action real (and the ſame B. ſeems in an action mixt.) and he may have a property, and buy and ſell. 38. *H.* 8. *B. Denizen* 10. *Nonability* 40. See Dyer the beginning.

Twas ſaid in the *Kings Bench*, That to ſay that the Plaintiff is an alien born, Judgement; if he ſhall be anſwered, is no plea in an action perſonal, otherwiſe in an action real. Yet this hath been in queſtion after this time in the ſame Court: and twas ſaid that an alien born is no plea in Treſpaſs, if he doth not ſay further, That the Plaintiff is of allegiance of one ſuch a one, enemy to the King: for tis no plea in an action perſonal againſt an alien, that he is of the allegiance of ſuch a Prince, which is of amity with the King. 1. *E.* 6. *B. Nonability* 62. See 38 H. 8. before.

If an alien born purchaſe, the King ſhall have it: but the purchaſe ought to be found by office: and ſo twas in the caſe of *Alien* King: and B. ſeems that an information in the *Chequer*, will not ſerve in this caſe. *Time, E.* 6. B. *Denizen* 17. the end. See 5. Mar. 1. after. See Coke upon Lit.

See before. See Coke upon Litt. Twas said in Parliament, That if an alien born obtain a Lease for years, that the King shall have it; for he cannot have Land in this Realm, of no estate. 4. *Mar.* 1. B. *Denizen* 22.

Amendment.

See 24. H. 8 after. By *Fitzherbert*, and the Court; where a Writ of Error was sued to remove a Record out of the *Common Bench*, into the *Kings Bench*, betwixt an Abbot and I. N. the Warrant of Attorney varied in the Roll in the name of the Abbot; and twas amended after Judgement: and if they had not amended it, they said, that those of the *Kings Bench* would have amended it. 23. *H.* 8. B. *Amendment* 85. the end.

See before 23 H. 8. Note, That where a Warrant of Attorney varied from the name of the Corporation of the party, and a Writ of Error was brought to those of the *Common Bench*, they amended it presently: and they said that those of the *Kings Bench* would have done the like. 24. *H.* 8. B. *Amendment* 47.

1 E 5. 7. by Vavisor & Catesby. See 6, & 7 Note, twas agreed by the Kings learned Councel, That the King may amend his Declaration in another Term, in

in omiſſion, and the like: as where an information miſrecites the Statute, this may be amended; for miſrecital is the cauſe of Demurrer: for if it be miſrecited, then there is no ſuch Statute: but he cannot alter the matter, and change it utterly; yet the ſame Term he may. 4 *Eliz Com.* 243. by *Weſton.* 30. *H.* 8. B. Amendment 80.

E. 6. Com. 85: See 33. H. 8. Tit. Parliament

Appeal.

Note, by the Juſtices of both Benches, a man ſhall not have the plea in an appeal; That the dead aſſaulted him, and that he killed him in his defence, but ſhall plead not guilty in manner and form, and ſhall give this matter in evidence: and the Jurie is bound to take notice of it; and if they finde it, he ſhall go acquitted in form aforeſaid. Nor he ſhall not have this for plea with a traverſe of the murther: for the matter of the plea is murther. Nor murther cannot be juſtified; and when the matter of the plea is worth nothing, there a traverſe the like: (B. *Appeal*, 122. *Corone.* 1.) the end. And where the Jury acquits the Defendant upon an Indictment before the Coroners, they

1 M. 1 Com 101.

4. E. 6. Com 12. 14 H. 7. 2. by Fineux, 1 3. E. 4. 3 St. 181. B.

ought to finde that he killed the man: and there they may ſay, That the ſame Defendant killed him *ſe defendendo*: but upon an Indictment before other Juſtices, it ſuffices to ſay, not guilty only, without more. 37.*H.*8.B. Appeal, 122:

The Heir of a man killed ſhall have an appeal, as well of Homicide of his anceſtor, as of Murther. 2.*E.* 6. B. *Appeal* 124.

M.2, M.1. by the Juſtices accord. St. 59 B. See 21 E 4.73. By Huſſey.

Note, if a woman who hath Title of an appeal of the death of her husband, takes another husband; he and the wife ſhall not have an appeal; for the woman ought to have it ſole: for the cauſe of an appeal is, that ſhe wants her husband; and the reaſon is, becauſe the wife wanting a husband, is not ſo well able to live: and therefore when ſhee hath another husband, the appeal is determined: for the cauſe ceaſing, the effect ceaſes. (B. *Appeal*, 109.) as where a woman hath a *Quarentine*, and ſhe marries within the 40. daies, ſhee loſes her *Quarentine*. 1.*Mar.* 1. B. *Appeal*, 109. *Dower*, 101:

Time H,7. Appeal of death may be commenced before the Coroner, and Proces awarded to the Exigent: but the plea ſhall not

not be determined before him. Reading 113. B. *Appeal* 62. the end. *Corone* 82. See St: 64. A.

Apportionment.

Tis ſaid that if I ſell my Horſe, and the Horſe of W.N. to **A.** for ten pound, and W. N. retakes his Horſe, that A. ſhall render to me the entire ten pound: becauſe a Chattel cannot upon a contract be apportioned. 30. *H.* 8. B. *apportionment.* 7. See 24 H. 8 Tit. Contr.

If the Kings Tenant of four acres, alien one to the King: Or if he hath two Daughters, and dies: and the one aliens to the King, the Rent ſhall be apportioned if it be ſeverable: and this by the Common Law, by ſome. *Quære,* for the reading of *Fitzjames* is otherwiſe, 32. *H.* 8. B. *apportionment* 23. See after.

Before the Statute of *Quia emptores terrarum*, if the Lord had purchaſed parcel of the land holden of him, his entire Rent was extinct, though twas ſeverable: Yet now by the ſaid Statute it ſhall be apportioned, be it purchaſed by the Lord, or by another: But this doth not help a Rent Charge: becauſe the Statute is onely for the loſs of the chief Sir John Fitz. James

Lord. But of a Rent ſervice upon recovery of parcel, or of a diſcent of parcel, and the like, which are the acts of God, or of the Law, there was an apportionment at the Common Law, contrary of his proper act, as purchaſe: becauſe before the Stat. aforeſaid, it was of a rent ſervice, as tis at this day of a Rent charge, which is extinct by purchaſe of parcel of the Land, Reading B. *Apportionment.* 28.

Arbitrement.

Debt upon an Obligation: the Defendant pleads the Condition: if he ſhall ſtand to the award of I. and N. ſo that the award be made before ſuch a day, and ſaies, that the award was not made by the day: the Plaintiff may ſay, That they made ſuch an award before the day, which the Defendant in ſuch a point (and ſhew in certain in what) hath broken: for he muſt ſhew the breach in ſome point certain: otherwiſe the action lies not: 31. *H.* 8. B. *Arbitrement* 42.

8 H. 6. 18. by Newton B. Arbitrement 18.

Aſſets

Aſſets inter maines.
Aſſets in their hands. See Tit. Extinguiſhment.

Note, if Executors plead fully adminiſtred in an action of Debt, and give in evidence payment of Legacies, the Plaintiff may demur upon it; for ſuch adminiſtration is not allowable in Law, before debts paid. 33. *H.*8.*B. Aſſets inter maines* 10.

31 E 4.21. by Choke & Nele. Perk. 94 E 190. E.D.S. 79. 37 H.6.30: by Priſot: 2 H.6.16. per curiam

Where a perquiſite of a Villain ſhall be Aſſets: See Tit. Villeinage.

Aſſets per diſcent.
Aſſets by diſcent.

In an action of Debt againſt an Heir upon an obligation of his anceſtor, who pleaded nothing by diſcent; and twas found that Land diſcended to him, but not aſſets; twas adjudged that the Plaintiff ſhould have Execution of all his Lands, as well of Land purchaſed, as of Land diſcended: and *B.* ſeems the reaſon to be for his falſe plea. 3. *Mar.* 1. *B. Aſſets per diſcent* 5. in the end.

34 H.6.22. contra by Wangf: 40 E:3:15: by Belk:

Aſſignee

Assignee.

A man Leases a house and Land for years; and the Lessee Covenants that he and his Assignes will repair the house; and after the Lessee grants over his Term, and the assignee doth not repair, an action of Covenant lies against the assignee; for this is a Covenant which runs with the land: (*B. Covenant* 32. *Deputy* 16.) and also it lies clearly against the Lessee after that he hath assigned over his Term: and *B.* seems that if he bring several Writs of Covenant against both, that there is no remedy till he takes execution against the one: and then it seems to him, that if he sues against the other, he shall have an *Audita Querela.* 25. *H.* 8. *B. Covenant* 32.

Assise.

Assise: the Tenant pleads not attached by fifteen daies; the Bayliff was examined, who said that he attached him by the horse of a Farmor which was a Termor to the Tenant of the land in plaint, which matter was recorded: and

and *B.* seems that tis no good attachment; for the Tenant cannot forfeit the beasts of his Farmor: and an attachment ought to be made of such things which the Tenant may forfeit by Outlary. Note, between *Dudly* and *Leveson*, for the Mannor of *Parton*, in the County of *Stafford*. 31. *H.* 8. *B.* *Assise* 480. 27 H. 6. 2.

Note, by the Justices in the Common Bench, That in an assise against two, the one takes the Tenancy and pleads no wrong, and the other takes the Tenancy without that, that the other hath any thing, and pleads in Bar: there the Plaintiff shall be compelled to chuse his Tenant at his peril, as well as if both had pleaded in Bar, and accepted the Tenancy severally: and if it be found that he mis-elects his Tenant, the Writ shall abate, but he shall not be barred. And there when the Demandant elects his Tenant, and he pleads, there they shall be at issue, before that the Tenancy shall be inquired, and then the Tenancy shall be Inquired first, and after the other issue. *6. E. 6. B. Assise* 384.

Assurances.

Note, that Tenant in Tail who levies a Fine

a Fine with Proclamation, shall be bound, and his Heirs of his body also after the Proclamation made, and not before: so that if the Tenant in Tail die before all the Proclamations made, this shall not binde the issue in Tail; and the Proclamation cannot be made in shorter time then in four Terms (*B. Fine Levies* 109. *assurances* 6.) But Tenant in Tail who is not party to the Fine, shal not be so bound after the Proclamations, but that he shall have five years to make his claim: and if he fails of them, and dies, his issue shall have other five years by the equity of the Statute of W. 2. *Quod non habeat potestatem alienandi.* Yet tis said, if the first Issue neglect the five years, by which he is barrable, and dies, his issue shall not have other five years; for if the issue be once barrable by the Fine, the Tail is by this bound for ever: (*Quære*) And the Statute saies, That it shall binde parties and privies: and therefore where Tenant in Tail is party to the Fine, with Proclamation, and his issue claims *Performam doni*, the issue is privy: for he cannot convey to himself as heir in tail, but as of the body of his Father, which is privity. But a Fine with Proclamation,

Westm. 2. c. 1.

on, may be confessed and avoided; and then it shall not binde: for the Statute is intended *De finibus ritè levatis*. And therefore he may say, that the parties to the Fine had nothing *tempore finis, &c.* For if none of the Parties had nothing *tempore finis*, then tis a Fine by conclusion betwixt the parties: but all strangers may avoid it by the averment as afore. (*B. Fines, Levies*, 109.) And by the Statute of 32. *H.* 8. Fine with Proclamation by *Cestui que use* in Tail, shall binde him and his heirs after Proclamation made: and a Fine with Proclamation, the Reversion or Remainder in the King, and the Conusor dies, the Proclamation made tis no Bar, nor discontinuance; because that the Reversion or Remainder in the King, cannot be discontinued: therefore there the issue in Tail may enter after the death of the Tenant in Tail. (*B. Bar* 97. *Assurances* 6.) And *B.* seems, that neither the Statute of 32. *H.* 8. nor 4. *H.* 7. shall not binde the issue in Tail, nor the Reversion to the King by Fine with Proclamation, though that the Proclamation be made: and yet the Statute of 4. *H.* 7. wils that after Proclamation made, it shall be a final end, and shall conclude

See Tit: Fines Levied: Fitz: 142: A:

32. H. 8. c. 36 Rast. Fines 9. 4. H. 7. cap. 24.

as

as well privies, as strangers, except infants, Fem Coverts, and the like, *&c:* And the issue in Tail is privy. Yet *B.* thinks that the intent of the Statute was not that the issue in Tail, the Reversion to the King should be bound: for by him after this Statute, this was taken to be no discontinuance: and therefore it seems to him that it shall not binde the Issue in Tail, the Reversion in the King. (*B. Fines, Levies* 121.) Yet *Quære*, for the Statute of 32. *H.* 8. which wils that the heir in Tail shall be barred by Fine with Proclamation, after the Proclamation made, hath an exception of those, of which the Reversion, or Remainder, is in the King, so that it shall not binde such issue in Tail. *B. assurances* 6. the end.

See Cokes 1 Book.

32 H.c.36.

But otherwise tis of a recovery, and Execution had by writ of entry in the *Post*, with voucher by the Common Law,: for though that the Reversion, or Remainder be in the King, such recovery shall binde, and was a bar against the Tenant in Tail, and his issue presently; but not against the King. But at this day by the Statute of 34. & 35. *H.* 8. Recovery against Tenant in Tail; the Remainder, or Reversion in the King shall not binde the issue in Tail, but that he

See 32. H. 8 Tit. discontinuance after.

he may enter after the Death of Tenant in Tail. 30. *H.* 8. B. *Bar* 97. the end. *Aſſurances* 6.

Note, That for aſſurance of land, that the heir ſhould not ſell, twas deviſed, That a man ſhould make a Feoffment in Fee to two, to the uſe of himſelf for Term of life without impeachment of waſt, and after to the uſe of his ſon, and his heirs, until the ſon ſhould aſſent and conclude to alien it, or any part of it; or to charge or incumber it, and after imediately upon ſuch conſent and concluſion to the uſe of A. and his heirs, until as afore, and then &c. to the uſe of *B.* and his Heirs, until, &c and ſo of more, &c. and by ſuch aſſent and concluſion by the Statute of uſes. *Anno*, 27. *H.* 8. *c.* 10. the other ſhall be in poſſeſſion, *&c.* 38. *H.* 8. *B. Aſſurances* 1.

Where men enter into an arbitrement, and every one is bound to the other in an obligation, or other ſuch Covenants, and are bound to perform it: and tis awarded that every one ſhould releaſe to the other all actions, & the like: there it ought to be expreſſed all actions before ſuch a day, which ſhall be before the date of the Obligation for otherwiſe the Obligation of the

See 21. H. 7. 28. by Brudnel.

the award, or the laſt Obligations to perform the Covenants, ſhall be alſo releaſed. *Regulæ B. Aſſurances* 4.

Attaint.

Caveatur in every action triable by Jury, of the quantity of the land, as where a man demands 200. acres, where they are but a hundred ſixty or the like: and the title is for the demand, there if the Jury finde that he deſeiſed him of 200 acres, or the like, this is matter of Attaint. And ſo where they finde him gulty in treſpaſs or the like, of more treſpaſſes then he did, or of exceſſive dammage, and the like. 24. *H.* 8. B. *Attaint* 96.

1 E:5:6 by Suliard: 1:R:3:3: by Huſſey:

Quære by B. if an Attaint doth not lie upon a Verdict in an appeal of *Maihem* at this day, by the Statute of 23. H.8. *cap.* 4. For this year twas doubted. 38. *H.*8. B. *Attaint* 10. the end.

43 Aſſ:41: Aſſiſe is brought againſt Tenant by Statute Merchant, and againſt the Conuſor Tenant of the Free-hold, and the Aſſiſe acquits the Tenant by Statute Merchant, and attaints the other of diſſeiſen: the Tenant by Statute Merchant ſhall not have an Attaint, nor the Lord

Lord where Land is recovered againſt him, and the heir, where he hath the heir in Ward; nor the Termor, where land is recovered againſt him, and the Leſſor, becauſe they loſe not any Free-hold: and becauſe that they are acquitted by *W. Whorewood* the Kings Attorney. Yet by B. tis not reaſonable where they are named, and loſe their intereſt: yet it ſeems to him, that he that is acquitted ſhall not have an attaint; but if they are found diſſeiſors, they ſhall have an attaint hy him. *Time, H.8.B Attaint* 82. the end.

Note; For Law, where Treſpaſs of battery, goods carried away, or a writing broken (which are tranſitory) is done in one County, yet an action may be brought in an other. (*B. Attaint* 104. And ſo twas agreed in Treſpaſs in *London*, of breaking of at D. in *London*, where indeed D. was in the County of E. for theſe are not local. *B. Lieu.* 65.) And therefore in Treſpaſs tranſitory, the place is not iſſuable, nor traverſable. No more then in Treſpaſs upon the caſe, upon a promiſe; and theſe may be continued. (*B. Traverſe, &c.* 283.)

See 24 H. 8. Tit. Action upon the caſe

And in thoſe caſes, the Jury of ano-

39 H.6. 8. by Aſhton 9 E.4. 45. by Choke. ther County may take Conuſance thereof, but is not bound to it: but if they take Conuſance, attaint lies not. Otherwiſe of Treſpaſs of Trees cut, or Graſs trod, which are local, and ſhall be brought in the proper County. 2. *Mar.* 1. *B. Attaint* 104. *Jurors* 50.

See 20 H.7 5. Note; Tis ſaid that upon an Information for the King, which paſſes upon the iſſue tried, the King nor the informer ſhall not have an attaint; for the informer is not fully party. And when the Defendant hath anſwered, the Com. 2. See 7 E.6. Kings Attorney replies for the King; and after, no further mention of the informer: and therefore neither the one, nor the other ſhall have an attaint. 4. *Mar.* 1. *B. Attaint.* 127.

Where an attaint lies, where not. See *Tit. Dammages.* And *Tit. Fanxifier.*

Attornment.

See my Lord Cokes, Rep. Note; That Attornment may be made by Tenants, to the Lord in his Court: to the Steward in abſence of the Lord, or purchaſor. But Attornment to the ſervant of the purchaſor out of Court, and in abſence of the Purchaſor,

Purchaſor, is not good: but by payment of one penny for every Tenant to the ſervant of the Purchaſor; and in his abſence, in name of Seiſen of their ſeveral Rents, is a good attornment: for a ſervant may receive Rent for his Maſter.

Quære. If no Rent then is due, nor the rent day come. 28. *H.* 8. *B. Attornment* 40.

Twas agreed, That where Land is ſold by Deed, indented and inrolled according to the Statute of 27. *H.* 8. *c.* 10. there becauſe the uſe is changed by the bargain and ſale, by the ſaid Statute, and the buyer in poſſeſſion; and hath no means to compel the Tenant to attorn; there he may diſtrain, and avow without attornment. Otherwiſe upon a grant by Fine; for there he may have a Writ of *Per quæ ſervitia.* 30. *H.* 8. B. *attornment* 29. the end. Conc. Lit. 39 H. 6. 24. c. 16. Raſt. Inrolments. 2 c. 10. Raſt. Uſes 9. Lit. 230.

Note, That if a man hath Common of Paſture to a certain number; or Common of Eſtovers to a certain number of Carts and with Grant them over; they paſs without attornment; becauſe they are not to be taken by the hands of the Tenant, but by the mouth of beaſts, and by cutting, and Abr. of Aſſ. 22.

See 2 E.6. after. carrying. So ſee that when no attendancy nor payment is to be made by the Tenant, there the thing paſſes without attornment. 31. *H.*8. B. *Attornment.* 59.

See by *Whorewood* the Kings Attorney; where a man Leaſes for forty years, and after Leaſes the ſame Land to another, to have from the end of the firſt Term for twenty years, this needs no attornment: otherwiſe where he grants the Reverſion as afore, there ought to be attornment. (*Quere*, and ſee after.)

See 2 E.6. Com. 379.

See Tit. Leaſes See after.

And if a man Leaſes for ten years, and after Leaſes to another for twenty years, this is good for ten years without Attornment: otherwiſe if there were a word of Reverſion. 37. *H.*8. B. *attornment.* 41.

A man Leaſes Land for twenty years, the Leſſee Leaſes over for ten years, rendring Rent, and after grants the Reverſion of the Term, and Rent to a ſtranger, this ſhall not paſs without attornment, by reaſon of the attendancie of the Rent: otherwiſe, if no Rent were reſerved upon the ſecond Leaſe for ten years, for then there is no attendancie to be made, nor action of Waſte, nor

See 31. H. 8. before:

nor the like to be brought. For as B. ſeems, attornment is not neceſſary; but to have avowry, or an action of Waſte. 2.*E*.6.B.*attornment*.45.

See by *Mountague*, chief Juſtice, and *Townſend*, That by a Feoffment of a Mannor, the ſervices paſs without attornment of the Free-holders. But B. ſeems that the Tenants ought to attorn. 4.*E*.6.B.*attornment* 30. Lit.125.& D.S.35: & 9.E.4.33. contra.

Note; If a man let a houſe, and 200 acres of Land for Term of life; and after grant the Reverſion to another, to have the ſaid Houſe, Land, and Tenements, *a Feſto Sancti* Michaelis *prox-poſt mortem vel determinationem intereſſe* of Tenant for life for twenty one years then next following: the Tenant for life dies before attornment, yet the grant of the Reverſion is good, becauſe that the words in the *Habendum* of the houſe and land, is intended to be a Leaſe; and a Rent was alſo reſerved upon it, and ſo a good Leaſe without attornment. By *Brown*, *Sanders*, and *Stamphord*, Juſtices. Yet by B. Chief Juſtice, tis but a Grant of a Reverſion, and no Leaſe: but yet the grant is good without attornment; becauſe that tis to Commence after the death of Tenant Com.175. & 152. See 37 H.8 before.

nant for life, ſo that the Tenant for life ſhall not be attending to the Grantee; nor ſhall he avow upon him, nor have an action of Waſte, or the like: by judgment of the Court. 3. *Mar.* 1. B. *Attornment* 60. *Leaſes* 73.

Attorney.

In theſe Caſes a man ſhall not make an Attorney, except in ſpecial caſe. *viz.*
Regiſter 9. Attaint, Premuniri, Appeal, *Per quæ ſervitia. Quid juris clam. Quem redd. reddit.* Nor in aſſigning of Errors: nor at the *Plures* in caſe of contempt: nor the Tenant in a *Ceſſavit* upon tender of arrearages. Nor the pray' to be received in a *Pr. quod redd.* Nor in an
Regiſter 9. aſſiſe; nor in an attachment. *Nec contra finem levat*; nor in any caſe where the Defendant ſhall be impriſoned.

Audita querela.

45 E. 3. 17 A man ſeiſed of 20. acres, is bound in
13 H. 7. 22 by Rede. a Statute Marchant; and makes a Fe-
16 H. 7, 6. by Keble. offment of 15. to ſeveral perſons, and
5 E. 6. Com 72. Execution is ſued againſt one of them,
9. H. 4. 4. by Gaſc. he ſhall have an *Audita querela* upon
36 H. 8. B. his ſurmiſe, to have the other Feoffees

Audita querale 2. the end. 48 E. 3. 5. by Finch. 17 E. 2. B. Suit 13. econt. See Cokes Rep:

to

to be contributory with him. But if execution be ſued againſt the Conuſor himſelf, he ſhall not have ſuch contribution: for this is upon his own act (B. *Audita querela* 39.

Yet if the Conuſor dies, and the Conuſee ſues Execution againſt the heir, he ſhall have Contribution of the Feoffee. So every of them ſhall have of the heir. 25. *H.* 8. B. *Audita querela* 44. the end.

Averments. See Tit. Pleadings.

Note, Where a man pleads a recovery by a ſtrange name of the thing demanded (B. *Averments* 42.) as if a *Precipe quod redd.* be brought of the Mannor of B. or the like, the Tenant pleads a Fine, Recovery, or the like, of the Mannor of G. he ought to aver that the one and the other, are one and the ſame Mannor, not divers: contrary. if he pleads a Fine, or recovery *de predict. Manerio de* B. for this word (*predict.*) is in effect an averment that all is one. (B. *Pleadings* 143.) 21 E. 4. 52 3 Mar. Com. 150.

And where a man pleads a Recovery by a ſtrange name of the parties, he

ought to aver that the firſt perſon, and this perſon, are all one, and not divers. Otherwiſe B. ſeems where he pleads it by this word *predict.* 33. *H.* 8. B. *Averments* 24.

3 M. 1. Com. 163. 10 Eliz. ibid. 342.

Twas ſaid for Law, That an averment is not neceſſary in an avowry. *viz. & hoc parat. eſt verificare*; for tis in lieu of a Declaration; and the avowant is actor. 3 M. 1. B. *averment* 81.

Avowry.

Lord and Tenant by Fealty & 3 pence Rent, the Lord dies, his wife is endowed of the Seigniory; ſhe may diſtrain for 1 peny, & the Heir for 2 pence, & ſo now the Land is charged with two diſtreſſes, where it was charged but with one before: but this is not inconvenient: for he ſhall pay no more Rent then before. The ſame Law where the Lordſhip is divided by partition, between Heirs Females, and the like. 24. H. 8. B. *Diſtreſſe* 59. *Avowry* 139.

27 H. 8. c. 10.

If two Copartners make partition, and give notice to the Lord, he ought to make ſeveral avowries. And if a man ſell his land by Deed indented, inrolled within the half year according to the Statute

Statute, the avowry is not changed, *&c.* without notice, no more then upon a Fine. Yet B. doubts of of a *Connuſans de Droit com. Ceo.* &c. but if a man recover againſt the Tenant, or if the Tenant is deſeiſed, the diſſeiſor dies ſeiſed, and his heir is in by diſcent, ſo that the entry of the diſſeiſee is taken away, the avowry ſhall be changed without notice. The ſame law, if the Tenant make a Feoffment, and dies, the Lord ſhall change his avowry without notice; for nothing is diſcended to the heir of the Feoffor. And where notice is neceſſary, it ſhall be done upon the Land holden, with tender of the arrearages; for otherwiſe the Lord ſhall loſe his arrearages, if he avows or accepts ſervice of the Feoffee, *&c.* before the arrearages paid, *Ideo caveatur inde.* 29. *H.* 8. *B. avowry* 111. 146.

Perk 131: 39H:6.25. by Priſot: 37H.6.33. by Priſot. 7 E.4: 28. by Choke.

2 E.4.6. 34H.6.46. by Priſot.

7 H.4. 14: by Tilleſley.

In a Replevin, if the Defendant avows becauſe that A. was Lord, and was ſeiſed by the hands of B. then Tenant, *&c.* of ſuch ſerviſes, he may convey the eſtate of the ſaid B. in the Tenancy to the Plaintiff in the Replevin, by a *que eſtate*, without ſhewing how, but he cannot convey to himſelf of the ſaid

See Coke upon Lit.

ſaid A. in the Seigniory by a *que eſtate*, without ſhewing how; for the Seigniory is there in demand, and not the Tenancy: 34. *H.* 8. B. *avowry* 7. *que eſtate* 2. the end.

Note, That he which avows upon the Land, as within his Fee or Seigniory, by the Statute ſhall aleadge a ſeiſen, as in other avowry; and then ſhall conclude his avowry upon the land, as within his Fee and Seigniory: and in ſuch avowry, every Plaintiff in the Replevin (be he Termor or other) may have every anſwer to the avowry; as to traverſe the Seiſen, the Tenure, and the like, which are a good anſwer in an avowry: or plead a releaſe, or the like, as Tenant of the Free hold ſhall, though he be a ſtranger to the avowry; for ſuch avowry is not made upon any perſon certain; therefore every one is a ſtranger to this avowry: and ſo the Plaintiff may have every anſwer which is ſufficient 34. *H.* 8. B. *Avowry* 113.

Wimbiſhes Caſe, Time H: 8: Com: 21 H. 7: 12 21 E: 4: 5: Com: 269.

'Twas agreed that to ſay, That the place where, *&c.* is 4. acres, which is, and was the time of the caption his Freehold, for which he diſtrained, and took the beaſts for dammage Feaſent, was

was a good avowrie. 4. *E.* 6. B. *avowrie* 122.

'Twas holden by the Juſtices of both Benches, That where a man holds by Rent and Knights ſervice, and the Lord and his anceſtors have been alwaies ſeiſed of the Rent, but not of the homage, eſcuage, nor of ward, yet if a ward falls, he ſhall have the Wardſhip of the heir, for the ſeiſen of the rent ſuffices to be ſeiſed of the Tenure, as to this purpoſe. yet otherwiſe B. ſeems to make avowry. 7. *E.* 6. B. *avowrie.* 96. the end. Ward, 69. See 6 E. 6. Tit. Ward

Note, That 'twas agreed that at this day by the limitation of 32. *H.* 8. the avowry ſhall be made generally, as was uſed before: and if there were not ſeiſin after this limitation, then the Plaintiff in bar of the avowry may alleage it, and traverſe the ſeiſin after the limitation (B. *avowry* 107.) Alſo where a man brings an action real, or mixt; or makes avowry, or Conuſance, and iſſue is taken upon the ſeiſin *infra tempus Statuti*, and tis found againſt the Demandant, Plaintiff, or Avowant; this is peremptory by the ſame Statute. 1. *M.* 1. B. *Peremptory* 78. 32 H. 8. c. 3. Limitation 3.

Aver-

Averment is not neceſſary in an Avowry. See Tit. *Averment.*

Barre.

WHere a Fine with Proclamation, or a Recovery ſhall bar an eſtate tail; where not, and where the Reverſion is in the King, with other good matter concerning Fines. See Tit. *aſſurances.*

Baſtardie.

Note, That twas taken by the Commons houſe of Parliament, if a man marry his Coſin within the degrees of Marriage, who have iſſue, and are divorced in their lives, by this the eſpouſals are avoided, and the iſſue is a Baſtard. Otherwiſe, if the one die before divorce, there divorce had after ſhal not make the iſſue a baſtard; for the eſpouſals are determined by death before, and

39 E. 3. 31. by Thorp.

and not by the divorce. And a dead perſon cannot bring in his proofs; for divorce after the death of the parties, is but *ex officio*, to inquire *de peccatis*, for a dead perſon cannot be cited nor ſummoned to it. 24 *H.* 8. B. *baſtarde.* 44. *D'arraignement* 11.

Battel.

Tis ſaid that if an appeal of Murther be brought in the *Kings Bench*, the Defendant joyns battel, it ſhall be before the Juſtices of the *Kings Bench*, and not before the Conſtable, and Marſhal. 5. *M.* 1. B. *battail.* the end 16.

Bill.

'Twas ſaid, That a *Premunire* ſhall be maintainable by Bil in the *Kings Bench*, though that the party be not *in cuſtodia mareſcalli.* (B. *Bill* 1.) And 'twas common that many Clerks were compelled to anſwer to bills there, who were not *in Cuſtodia mareſcalli.* 22. *H.* 8. B. *Premunire* 1. 27 H. 6. 5. contra.

Certiorarie.

Certiorari.

IT was agreed in *Chancery*, That there is no *Certiorari* in the *Register* to remove a Record out of a Court into the *Common Bench* immediatly, but it shall be certified in the *Chancery* by Surmise, then to be sent into the *Common Bench* by *Mittimus*.

44 E:3.28 accord: And indictments may be removed out of the Countrey by *Certiorari* to the Chancery, and may be sent to the Justices of the *Kings Bench* by *Mittimus*, and then they shall proceed upon it. 36. *H.*8. B. *Certiorari* 2c. the end.

Certificate of the Bishop.

Time E:6 accords 26 H:8:c: 'Twas holden that if the Bishop certifies that such a person paid not his Tenths, according to the form of the Statute

Statute, which wills, That *ipso facto*, the Benefice ſhall be void; that in this caſe a man ſhall not have an averment contrary to the certificate. *Time H.* 8. B. *Certificate deveſque* 31. the end.

Challenge.

Time Eliz. accords

Note by the *Exchequer*, and both *Benches*, where the parties are at iſſue in a plea of land, where the land lies in three or four hundreds, there if the Juror hath land in any of the hundreds, or dwells in any of the hundreds, it ſuffices. 4. *M.* 1. b. *Challenge* 216.

In Treaſon tis a good challenge to witneſſes, to ſay that he was one of his accuſers (b. *Corone* 219.) And note, that by the Statute of 33. *H.* 8. a peremptory challenge is ouſted in caſe of high Treaſon: yet by the ſaid Statute *Queen Mary*, tis enacted, That all tryals of Treaſon ſhall be according to the order of the Common Law, and not otherwiſe. And therefore it ſeems that he may have a challenge peremptory, as at Common Law. S. 35. Jurors. 4. *M.* 1. B. *Challenge* 217. *Trials* 151. the end.

See Coke upon Lit.

Charge.

Where a Grant of the Biſhop, or charge by him, with the aſſent of the Dean and Chapter, ſhall binde the ſucceſſor, and where not? See Tit. *Confirmation.*

Charters of Pardon.

Note, if a man be attainted of murther, or Felony by Outlawry or otherwiſe, and the King pardons him all Felonies, Murthers, and Executions *eorundem*, and Outlawries, and Waivings; and *Sectam pacis*. And a pardon and releaſe of all Forfeitures of Lands and Tenements; and of Goods and Chattels, ſhall ſerve but for the life; and for the land, if no Office be thereof found. But it ſhall not ſerve for the goods without reſtitution or gift. For the King is intitled to them by the Outlawry, without Office: but the King is not intituled to the Land, till Office found. And if an Office be found after, yet the pardon ſhall ſerve; for it ſhall have relation to the judgement, & then the mean pardon ſerves well; contrary, where an Office is found before the pardon granted; for then the King is ſeiſed by the Office, and there a releaſe or pardon

Note that theſe words (*executione eorundem*) are neceſſary, 6 E. 4. 4. by Choke, See my Lord Coke.

See 30. H: 8: after:

pardon cannot give it; but there ought to be a Gift or Grant. 29. *H.* 8. B. *Charters of Pardon* 52.

Note, if alienation without licence be pardoned by Act of Parliament, the party may enter without *Ouſter l'main*, or *amoveas manum*. Otherwiſe by another pardon, by letters Pattents. 29. *H.* 8. *B. Charters of Pardon* 53.

If intruſion by the heir, *poſt mortem anteceſſoris* be found by Office, and after the King pardons it by act of Parliament, or by letters Pattents, yet the heir ſhall ſue Livery: for this is not reſtored to him by a pardon: but if the pardon were granted before Office found, and at the making of the pardon, the heir is of full age, he ſhall retain the land, and the Office found after the pardon ſhall not hurt him. 30. *H.* 8. B. *Charters of Pardon* 54.

Filpot 16. E. 4. 1: accord: See 29. H. 8. before & 33 H. 8. Tit: Intruſion.

Chattels.

If Leſſee for years deviſe his Term, or other his Chattel or Goods, by Teſtament, to one for term of his life, the Remainder over to another, and dies, and the Deviſee enters, and aliens not the Term, nor gives, or ſels the Chattel.

See Time H. 8. Tit: deviſe. & Cokes Rep

and dies, there he in Remainder shall have it: but if the first Devisee had alienes, given, or sold it, there he in the Remainder had been without remedie for it (B. *Chattels* 23. *Done* 57.) And so B. seems if they be forfeit in his life, he in remainder hath no remedy. 33. *H.* 8. B. *Done.* 57. the end.

Choice in Action.
Thing in Action.

See 32 H. 8 after, & Cokes Rep 4 M. 1. Com. 173.

Note, where the Statute of 31. *H.* 8. gives to the King the possessions of Abbies, and all rights of Entries, Actions, Conditions, and the like, which the Abbies might have had; and that he shall be in possession without office, and that he shall be adjudged in actual and real possession of them, in such plight and sort as they were at the time of making of the Statute. Yet if an *Abbot* were disseised of 4 acres of land, the King cannot grant it over before entry made by him in it, because tis a thing in action real, and not like to a thing in action personal or mixt, as debt ward, and the like, by some. And some *è contra*, by reason of these words, *That the King shall be in possession.* Yet by B.

this

this ſeems, that he ſhall be in ſuch poſſeſſion as the *Abbot* was. S. of a thing of which the *Abbot* had poſſeſſion, the King hath of this actual poſſeſſion: & of ſuch of which the *Abbot* had but a cauſe of entry, or right in action; of theſe the King ſhall be veſted of a Title of entry, and Title of action. But the thing to which he hath ſuch cauſe of entry, or of action, is not for this in him in poſſeſſion: and therefore connot paſs from the King by general words; but *B.* ſeems, if the King recites the diſeiſen, and how the right and action thereof is given to him by the Statute, and grants it ſpecially that tis good. 33. *H.* 8. *B. Choice in Action* 14.

'Twas ſaid for Law, That the King may grant a thing in action, which is perſonal; as debt, and dammages, and the like, or a thing mixt; as the ward of body: but not a thing real, as an action of land, and the like, as Rights, Entries, Actions, and the like, which *Abbots* might have. (And that the King ſhall have theſe by the Statute of diſſolution of *Abbies*. 31. *H.* 8.) Theſe things in action the King cannot grant. Yet by B. ſee if there be not words in this Statute, to put the King in poſſeſſi-

See 33 H. 8 before, 2 H. 7. 8. by Huſſey: See Cokes Rep

on, though the *Abbot* were put to his action. 33. *H.* 8. *B. Pattents* 98.

Clergy.

No man ſhall have his Clergy but where his life is in jeopardie: and therefore not in petty larceny. And the *Biſhop* is Ordinary: all *Prieſts, Abbots*, and others inferior to him, which demand Clergy, or have Clergy: and if the *Biſhop* hath his Clergy, the Metropolitan ſhall keep him, as his Ordinary: and if the Metropolitan offend, and hath his Clergy, the King ſhall have him and keep him: the ſame is of Laps. *Reading B. Clergy* 19. *Corone* 183.

Note, That at this day *Bigamus* ſhall have his Clergy by the Statute: but a man attainted of Hereſie ſhall not: otherwiſe of a man excommunicated: and a *Jew*, nor *Turk* ſhall not have their Clergy: and a Greek and Roman, who uſe not our letters ſhall have their Clergy, and ſhall ſtay till a book of letters of their countrey comes. (*B. Clergie* 20.)

1 E. 6. c. 12 Clergy 21.

And if a man who is *captus oculis* prayes his Clergy, he ſhall have it if he can ſpeak latine congruouſly. *Quere*, for he cannot be a Prieſt, nor he cannot Miniſter. *Caſus B. clergie* 21.

A Baſtard ſhall have his Clergy; for he may be a Prieſt by licence. *Caſus B. clergie* 22.

Colour.

Note, That Colour ought to be matter in law, or doubtful to the lay people; and ſhall be given to the Plaintiff, and not to one who is mean in the conveyance: and ſhall not be given to a ſtranger who infeoffed the Plaintiff: nor ſhall be given to the Defendant: and ſhall not be given by a poſſeſſion determined. S. where it appears in the pleading, that the poſſeſſion is determined: but ſhall be given by an eſtate defeated: and where the Defendant bindes the right of the Plaintiff by Feoffment with Warranty, Releaſe, Fine, Recovery, Diſſeiſin, and Re-entry, and the like, there needs not any colour. And he which claims no property in the thing, but takes it as a diſtreſs, and the like, ſhall not give colour. Colour ſhall not be given but upon a plea in bar. B. *colour* 64. Colour ſhall not be given but by him, by whom you commence your Title, and not by a mean in the conveyance. He which pleads to the Writ, ſhall not give Colour. It behoves that colour be

See Cokes Book.

ſuch, ſo that if it be true, that of ſuch poſſeſſion, the Plaintiff or Demandant may have their action. He which juſtifies as ſervant, and conveys Title to his Maſter, ſhall give colour: colour by poſſeſſion in law, is good. *Regula.*

Commiſſion.

35 H. 8. accord. See after. See Tit. Officer.

Note, for Law, That where a Commiſſion of the peace iſſues to I. N. and others; and after I. N. is made Knight, yet the Commiſſion remains for him. (Yet *Anno primo*, *E.* 6. cap. 7. is a Statute made, That making of the Plaintiff Knight, ſhall not abate the action, nor the Commiſſion in which ſuch perſon is named.)

And where a man learned in the ſame Law is put in Commiſſion, and after is made Serjeant at Law, yet he remains in authority by the ſame Commiſſion. And when a Juſtice of the Bench is made Knight, yet he remains Juſtice, and this Commiſſion ſhall ſerve him. 36. *H.* 8. *B. Commiſſions* 22.

See Tit. Officer.

Note, by comming of a Commiſſion of *Oyer* and *Terminer*, the Commiſſion of Gaole Delivery is not determined; for the one ſtands with the other.

Otherwiſe,

Otherwiſe, where the one Commiſſion is contrary to the other.

As of a Commiſſion of the Peace where there is a former Commiſſion thereof to others, this is contrary that every of them ſhould be Commiſſioners of one and the ſame thing, and both in force. And the Commiſſion of Gaole Delivery, is onely to deliver the Gaole. Commiſſion of *Oyer* and *Terminer*, hath words *ad inquirendam audiendam, & determinandam.* But moſt commonly the Juſtices of Gaol delivery are alſo in the Commiſſion of the Peace, and by this they indict, and after deliver the Gaol as well of them, as of others.

And note, That the Juſtices of *Oyer* and *Terminer*, cannot by this authority arraign no Priſoners, but thoſe which are indicted before them: but contrary, if they have Commiſſion of Gaol delivery alſo, for theſe both may be executed *ſimul & ſemel* 3. *M.* 1. *B. Commiſſion* 24.

If a Juſtice of the Common Bench be made Juſtice of the Kings Bench, though that it be intended but *Pro illa vice*: as twas of Sir *James Dier* this year; yet this ſhall determine his pat-

tent of the Common Bench, though he ſurrenders the Patent of the Kings Bench the next day: for the Kings Bench is the higheſt Court, and if the Common Bench erre, this ſhall be controlled by the Kings Bench. And therefore a man cannot be Judge of the one Bench, and the other together to reverſe his own judgement. And as often as a Juſtice of the Common Bench, is made Juſtice of the Kings Bench (as it hath been often ſeen) the Commiſſion of the Common Bench by this is determined: for the one Court is within the controlment of the other; but a man may be a Juſtice of the Common Bench, & chief Baron of the *Exchequer* together, & may be Juſtice of the Common Bench, & Juſtice in *Oyer*, and *Terminer*, or of Gaol delivery together: for none of theſe Courts hath controlment of the other. And if an Incumbent of a Benefice be made a Biſhop, the firſt Benefice is void: for he which hath the office of Soveraignty, cannot have the office of inferiour, by ſome of the Juſtices. Yet B. doubts; for a Juſtice *de banco regis*, may be a Juſtice in *Oyer*, or of *Oyer* and *Terminer*, or of Peace, or of Gaol delivery; and yet if they erre in their pleas in the *Oyer*, or *Oyer* and

The ſame admitted 1 H. 7. 10.

D. S. 127. 29 H. 8. 116. Petty Br: See before.

Terminer, or in their Proces, or outlawry before Juſtice of Peace, Writ of Error lies thereof before the King in his Bench. But the Pleas in the *Kings Bench* are holden *coram rege ubicunque fuerit in Anglia*, and ſo the *Kings Bench*, is a Court removable: and by the Statute the *Common Pleas teneatur in loco certo*, then tis contrary of the Oath of the Juſtice of the one Court, and the other; for the one is certain, and the other incertain, 5. *M.* 1. *B. Commiſſions* 25. Magna-Charta. c. 11; Raſt: Common-Pleas 1:

Where a Juſtice of Peace is made Knight, or takes other dignity, yet his authority ſhall remain. And ſo of a Juſtice of the *Common Bench* made Knight, his Commiſſion remains in force. 1. *E.* 6. c. 7. *B. Commiſſion* 4. 36. H. 8. accord; before. Marrow Serjeant in the Inner-Temple upon the Stat. of Peace.

If the King grant to a Major and Commonalty, and their ſucceſſors to be Juſtices of Peace in their Town, and after makes a Commiſſion of the Peace to another there, yet the firſt Commiſſion ſhall remain in force; becauſe that tis a grant to them, and their ſucceſſors, and ſo not revocable as a Commiſſion is. (*B.* Commiſſion 5.)

If a new Commiſſion of the Peace be proclaimed, or read in full County, the ancient Commiſſion of the Peace is determined.

termined. And all the Justices ought to take notice, and if they sit by the ancient Commission, all they do is void. And if a Commission be directed to *A.* and *B.* who are not in *rerum natura*, or are dead at the time of the Teste, &c. The ancient Commission remains in Force, for this new Commission is void.

If a Commission be directed to N. *pro hac vice*, this shall determine the ancient Commission of these matters. And yet the new Commissioners cannot sit but *Unica vice*. (B. *Commission* 6.) If a commission be directed to hear and determine Felonies, this shall determine the ancient commission of the Peace, as to Felonies, but not as to the Peace: and so determined in part, in part not, (B. *Commission* 7.) commission in *Eyer* is made to the county of N. and Proclamation there, this determins the Commission of the Peace. (B. *commission* 8.) Commission of the Peace is in the county of N. and the *Kings Bench* comes there, this shall not determine the Commission of the Peace: contrary, if they make Proclamation of the coming of the *Kings Bench* (B. *commission* 9.) Commission of the peace

is

is made to 4, in the County of N. and after the King makes I. S. Juſtice of Peace there for term of his life; the firſt Commiſſion is determined. (B. *Commiſſion* 10.)

If Juſtices ſit by Commiſſion, and do not adjourn it, the Commiſſion is determined. And ſee a Statute where new Commiſſioners of Gaol delivery, may ſit upon the Records of the ancient Commiſſion of the Gaol, which is determined. 1 E. 6. c. 7. See after 1 E 6. Tit. Corone.

And when a Commiſſion of *Oyer* and *Terminer* is determined, the Records of that ſhall be ſent into the *Kings Bench*; but Records of the Juſtices of Gaol delivery, ſhall remain with the (*Juſtos rotulorum* of the County. And the next Juſtices of Gaol delivery ſhall proceed upon them, upon judgement of death by the ſaid Statute. *Quare*, if they ſhould proceed by the words to allowance of Clergie, or Sanctuary, it ſeems ſo, by the equity. *B. Commiſſions* 11.

Conditions.

Debt upon an Obligation, with a condition to perform all covenants contained in certain Indentures; the defendant See after 33 H. 8. & 37. H. 8.

fendant cannot plead the condition, and reherſe the covenants, and ſay generally that he hath performed all the covenants, without ſhewing how, by the *Prothonotaries*, 20. *H.* 8. B. *conditions* 12.

If a man deviſe 20 *l.* to W. S. to be paid in four years after his death, and dies, and after the Deviſee dies within the four years, yet the Executor of the Deviſee ſhall have the Money, or the reſt of it by ſuit before the Ordinary in the court Spiritual; for tis a duty by the Teſtament, or deviſe. 24. *H.* 8. B. *Deviſe* 27. 45. *conditions* 187.

Fineux agrees, 11 H 7. 12. & 12 H. 7. 18. By *Fitz.* if a man before the Statute of Tenures had made a gift of Land to one in Fee, for to repair a Bridge, or for to keep ſuch a caſtle, or for to marry yearly a poor virgine of *S.* this is a Tenure, and not a condition; and the Donor may diſtrain, and make avowries.

14 H. 8. 10 by Brudnel Fitz. 205. But if a woman give land to a man for to marry her, this is a condition in effect, and no Tenure, which no bodie denied. 24. *H.* 8. B. *condition* 188. *tenures* 53.

If a man Mortgage his land to W. N. upon condition that if the Mortgager,

and

and I. S. repay 100 l. by ſuch a day, that he ſhall re-enter, and he dies before the day, but I. S. paies by the day, the condition is performed; and this by reaſon of the death of the Mortgager, notwithſtanding that the payment were in the copulative; otherwiſe, if it were not in the caſe of death, 30. H. 8. B. *conditions* 109. Accord: 15 H: 7: 2: & 13:

By many, if a man make a Feoffment in Fee, *ad intentionem* to perform his will, this is no condition, but a Declaration of the purpoſe and will of the Feoffer, and the heir cannot enter for *non performance*. 31. *H.* 8. B. *conditions* 191. D: 8: 123: See 27: H: 8: 151: by Knightly:

If a man be bound in a bond to pay 20 l. the Obligor in whoſe diſcharge the condition goes, ought to be ready at the place, *&c.* all the day, and the Obligee may come any time of the day, 32. H. 8. *B. conditions* 192. 6 H: 7: by Bryan Cont.

A man gives land in Tail, or Leaſes it for life, or for years, rendring rent, with a condition of re-entry for default of payment, there if he Leaſes part of the land to the Donor, or Leſſor, or if the Donor or Leſſor enter in part of the land, he cannot re-enter for the rent arrear after; for the condition is wholly ſuſpen- Perk: 163: C: See Cokes Rep Knights caſe: Lillingſtons. Damports ct

ſuſpended; for a condition cannot be apportioned nor divided. 33. *H.* 8. B. *Extinguiſhment* 49. *conditions* 193.

20 H:8:19: 26 H:8:5: by Engelfi 6 E:4:5: by Rogers 27 H:8:11: 27:See before 20 H: 8: Pleading of Covenants performed

Debt upon an obligation, to perform all covenants contained in certain Indentures, tis no plea that he hath perfor. med all the covenants generally, S. *Quod performavit omnes & ſingulas conventiones in indentura pred. ſpecificat. ex parte ſua perimplend.* if they be in the affirmative; but muſt ſhew in certain in every point how he hath performed them, (B. *conditions* 198. *covenant* 35.) And where in a Covenant the Defendant ſaies, that the covenants are that he ſhall pay 10 l. by ſuch a day, and infeoff him by the ſame day *quas quidem conventiones idem defenſoris bene perimplevit*, this is no good plea; for he muſt ſhew in certain how he hath performed it. 33. H. 8. B. *covenants* 35. *the end.*

See Cokes Rep:

Note for Law, That *Proviſo ſemper* put on the part of the Leſſee upon the words of *Habendum*, makes a condition; otherwiſe of a *Proviſo* of the part of the Leſſor, as tis covenanted in the Indenture, That the Leſſee ſhall make the reparations; *Proviſo ſemper*, That

That the Leſſor ſhall finde the great Timber, this is no condition.

Nor by ſome tis no condition when it comes amongſt other covenants on the part of the Leſſee, as tis covenanted after the *Habendum*, and after the *Reddendum*, That the Leſſee ſhall ſcowre the ditches, or the like: *Proviſo ſemper*, That the Leſſee ſhall carry the Dung from it to ſuch a field; this is no condition to forfeit the Leaſe for not doing of it: contrary, if ſuch *proviſo* be put imediately after the *habendum*, which makes the eſtate; or after the *redendum*. *Quære*, by B. *conditions* 195. 35. H. 8. Quære:

If a man Mortgage his land upon defeiſance of repayment to re enter, and the bargain to be void: and the vendee Leaſes the Land to the vendor for ten years by Indenture of defeiſance; and further grants to him, That if he paies 100 l. *infra terminum dict.* 10 *annorum*, that then the ſale ſhall be void, *&c.* and the Leſſee ſurrenders the Term, yet the tender of the 100 l. is good within the ten years; becauſe that the ten years is certain, though the leaſe is ſurrendred or forfeited. Otherwiſe,

if

See my Lord Coke Cheddingtons. c.

if it were to repay *infra terminum predict.* without these words, *ten years*; for in the one case the Term, S. the Lease is the limitation of payment, and in the other case the ten years, by *Whorewood* in his Reading in the Lent. (B. *conditions* 203. *Defeasans* 18.) The same law if B. holds certain land for term of ten years of A. and tis covenanted betwixt A. and B. That if B. pay 100 l. to A. within the said ten years, that then he shall be seised to the use of B. in Fee, and *B.* surrenders his term to A. and after payes him 100 l. within the ten years, there *B.* shall have Fee; for the years are certain: otherwise, where tis covenanted, That if he payes 100 l. *infra terminum predict.* and he surrenders, and after payes the 100 l. this is nothing worth; for the Term is determined: but in the other case the ten years remain, notwithstanding the surrender. 35. H. 8. *B. Exposition*, 44.

Twas holden clear in the *Kings Bench* that where M. and other two are bound to stand to the award of I. N. so that it be made and delivered by the Arbitrators in writing to the parties before Michaelmas, they make the award, and deli-

deliver it to one by Michaelmas, and cannot finde the other by the day, this ſhall not binde the others to whom twas not delivered. And the reaſon B. ſeems; becauſe that in this caſe they might have made 3 parties, and have delivered to every party one. 37. *H.* 8. B. *conditions* 46. the end.

See Coke lib. 8 97. 98. Baſpoles caſe Dyer fol. 216. b. See 38. H 8. after. 4 H. 7. 12. by Keble. 22 E. 4. 43. by Catesby 35 H. 6. 11. per cur. 40 E 3. 20 M. 35 H. 8. B. cond. 18. the end 38 H 8 31. 6. H. 7. 6. by Huſſey. Admitted 18 E. 4. 27. See before Jay accords 11 H. 7. 17 34 H. 6. 18. by Priſot. 19. E. 4. 1. by Catesby. See before 37. H. 8.

Tis ſaid by the Court in the Kings Bench: in Debt upon an obligation to keep without dammage, S. harmleſs, where the Defend. pleads that he hath ſaved him harmleſs, tis no plea without ſhewing how; for he which pleads a diſcharge, or ſaving harmleſs, ought to plead it certain when he pleads in the affirmative. Otherwiſe, where he pleads in the negative; for if the Plaintiff be not dempnified, he may plead *quod non damnificatus eſt* generally. 37. *H.* 8. B. *conditions* 16. 198. *in finibus*.

If a man be bound in an Obligation to pay 10 l. to the obligée at *Paris* beyond Sea, at a certain day, if the Obligor pay at another place, and the ſame day in *England*, and the other accepts it, tis good clearly. (B. *conditions* 206.) And tis ſaid in debt upon an obligation

to acquit & ſave without damage, *quod non damnificatus eſt*, is a good plea, for tis in the negative, and therefore good without ſhewing how, but where he pleads, that he hath kept him without dammage in the affirmative, he ſhall ſhew how. 38. *H.* 8. *B. Conditions.* 93. the end.

21. H. 7. 12. cont. by Frowick. 6. E 6. Com. 135. 1. M 1. Com. 142. See Coke Penants caſe.

If a man let land for term of life upon condition, that if he doth not go to *Rome* by ſuch a day, that his eſtate ſhall be void, and the leſſor grants the reverſion over, the Tenant attorns, and after he doth not go, yet tis not void till entrie, by *Bromley* chief Juſtice. 2. *M.* 1. *B. Conditions.* 245. the end.

Confeſs, and avoid.

Replevin, the defendant ſaid that *B.* was ſeiſed in fee and leaſed to *E.* for 40 years, which *E.* granted his intereſt to the defendant. 38. *H.* 8. by which he was poſſeſſed, and diſtrained for damage feaſant, the plaintiff ſaid that the ſame *E.* 28. *H.* 8. granted his intereſt to him, he ſhall not traverſe the Grant. 38. for hee hath

con-

confeſſed and avoided it, by the eldeſt grant obtained. 2.*E.*6.*B. Confeſs and avoid:* 65.

Confirmation.

Biſhop charges, or grants an office with the aſſent of the Deane and Chapter, and dyes, this is worth nothing, by ſome, for it ought to be confirmed by the Dean and Chapter; And this fell out in the grant of the Stewardſhip of the Biſhop of *London*, betwixt *Aldred Fitzjames*, and *John Edmunds* of the middle Temple, where the Biſhop granted the Stewardſhip of his lands to *A: F.* by the aſſent of the Dean and Chapter, and died, by which the grantee loſt the office, as tis ſaid, becauſe the Dean and Chapter had not confirmed it, yet more was in the grant of the Biſhop, as Miſnoſmer, and the like, for the ſaid *A. F.* was named *Etheldredus*, where it ſhould be *Aldredus*, and ſo he was miſnamed. Alſo there was a default in the Seale (*B. Charge* 58. *Confirmation.* 30) And alſo the Deed was *Quod ſigillum noſtrum appoſuimus*, which may bee

referred to the *Biſhop* onely, and not to the *Biſhop*, Dean and Chapter: And therefore by more, to this day the grant was avoided for theſe cauſes, and not for the other cauſe; and ſo a grant with aſſent of the Dean and Chapter, with all perfections is good. 33. *H.*8. *B.* Confirmation. 30. the end.

If the biſhop be patron, and the parſon makes a leaſe or grant by deed, there the *Biſhop* patron, and the ordinary, and the dean and chapter ought to confirm, if the grant or leaſe ſhall be ſure; otherwiſe where a lay man is patron in fee, and he and the ordinary confirmes, this ſuffices without the dean and chapter, for in the firſt caſe, the Biſhop patron hath an intereſt in inheritance to the Biſhoprick. But in the other caſe, he hath but a judicial power, therefore it ſuffices that he who hath the power at the time, *&c.* confirmes, for tis a judicial act. But in the other caſe, it bindes the inheritance, which he hath in *jure Eccleſiæ* which he cannot do againſt his ſucceſſor, without confirmation by the dean and chapter. (33. *H.*8. *B. Confirmation.* 21. *Charge.* 40. *Leaſes.* 64.) *Patet hic* that the patron ought to have a fee ſimple, and

Caſus Hill for the Parſonage & glebe of Stoke, ſuper Derne in Com. Salop. where the Parſon, Patron, Dean & Chapter made the aſſurrnce B. Charg 40. the end. See Tit: Leaſes.

and this *juri proprio*, becauſe of the dean and chapter, to be joyned with the Biſhop, where he is patron. B. Charge 40.

Note, that if the King for him and his heires grants *Catalla felonum & fugitivorum*, or the like, which lie in grant, and dies, the grantee needs no confirmation of the new King. But if it be a fair, or market, or the like, and ti s abuſed or miſuſed, as it may be, or if it be a judicial, or miniſterial office or power, as to be a Juſtice of peace, Eſcheator, or the like, there he ought to have a confirmation of the new King (B. *Confirmation.* 19. & 29.) yet B. ſeems that the grant of a thing which lies in grant, is good clearly, without theſe words, for him and his heires; But of warranty, covenant, Annuity, or the like, there he ought to make it for him and his heirs. 33. *H.* 8. *B. Confirmation.* 19.

1. R. 3. 4. See Cokes Rep.

Conſcience.

See Time. H 8. after. 7. & 8. E. Com. 302.

If a man buyes land, and the vendor executes an eſtate to the vendee, *Habendum ſibi imperpetuum*, without words of heires, where the intent of the bargain is to paſs a fee ſimple, and the vender upon requeſt refuſes to make other aſſurance, there lies a writ of *Subpæna*. 32. *H*. 8. B. *Conſcience* 25.

See 4. E. 6. Tit. Eſtates. & 6. E. 6. Faits inrolle 27. H. 8. cap. 16. Raſt. Inrolments.

Audely, Chancellor of *England* held clearly that if a man ſell his land before the Statute of Uſes, this ſhall change the uſe of the fee ſimple. And the ſame Law of a ſale by Indenture, by the Statute of 27. *H*. 8. without words heires. *Time H*. 8. *B*. Conſcience. 25. the end.

Continuances.

Note, that in the common recoveries by ſufferance, for aſſurances, the Tenant tenders iſſue, the demandant may imparle to a day in the ſame terme, and then the Tenant is demandant, and retracts, and judgement is given for the demand: againſt him, and after the Tenant over in value upon

upon the vouchee, *&c. Regulæ.* 22. *H.* 7. *B. Continuances* 69.

Contract.

A man ſells a leaſe of land, and certain cloath for 10 *l.* the contract is intire, and if the one of theſe were by defeaſible Title, yet the vendor ſhall have the intire ſumme, though the one part were deveſted from the vendee, for contract cannot be ſevered. 24. *H.* 8. *B. Contract* 35. See 30. H 8. Tit. Apportionment. & 12. H. 8. 18. See 33. H. 8. Tit Preſcription. 18. H. 7. 21. 24. Fitz. 121. M. 9. E 4 25 by Genny & Choke 50. 1. H. 6. 8. by Babing. 22. H. 6. 56. by Choke. 20. H. 6. 21. by Newton 28. H 6. 4. 21. H. 7. 5. by Cutler.

If a man be indebted to me upon contract, and after makes to me an obligation for the ſame debt, the contract by this is determined, for in debt upon the contract, tis a good plea, that he hath an obligation for the ſame debt. So if the obligation be made for parcell of the contract, which is intire. 3. *H.* 4. 17. But if a ſtranger makes an obligation to me, for the ſame debt, yet the contract remains, becauſe that tis by another perſon, and both are now debtors. 29. H. 8. *B. Contract* 29.

Corone, Crown.

A man pleads M 3.M.1. cont. 11. H.4.41. by Huls& Firwith accord.

Note, if a felon hath a pardon to plead, and pleads not guilty, he ſhall loſe the advantage of his pardon, and ſhall not plead it after. 18.*H.*8.B.*Corone.*199.

St.34.C. ſee 9. E. 4.28 by Neele.

Note, that at the Seſſions at Newgate, a man was judged to be hanged, and delivered to the Sheriff to make execution, and after eſcapes, and flees to the Church: and had the priviledg of it. 22.*H.*8.*B.Corone.*110. the end.

St.13.D. See Coke upon Lit.S. D.St134. 35.H. 6. 58.St.13. *C.* St. 198 *C.* 23. Aſſ.2.

Note, twas holden by all in the houſe of Parliament, that if a man kill one who is attainted by Premunire, this is no felony, for he is out of the protection of the King, which is, as if he were out of the Kingdom, and power of the King. Otherwiſe of him who is attainted of felony, and judged to death, the killing of him is felony. 24. *H.*8.*B. Corone.*196.

Tis ſaid, where a woman is arraigned, and adjudged to be hanged, or burnt, according to the Crime, and becauſe that ſhe is with childe, Execution is reſpited untill ſhee bee delivered,

delivered, and now ſhe is with childe again, becauſe that once execution was ſpared for the ſame cauſe, now execution ſhall be commanded to be done: and the Gaoler ſhall not be puniſhed. 28.*H.*8.*B. Corone*, 97. 12. Aſſ. 11.

A man ſteals goods in one County, and flees with them into another, he may be indicted, or appealed in any of the Counties, for tis felony in every of the Counties, for felony alters not the property. 34.*H.*8. *B. Corone.* 170. 4.H.7.5. by Fro-wick. B. Corone. 139. St. 182. C.

Note, that if 12 come for to do robbery, affray, riot, or the like, which are unlawful acts, one of them enters into the houſe, and kills a man, or doth other unlawful act, all the others which came with him to do the unlawfull act are principals. The ſame Law in the caſe of *Fines* Lord *Dacres*, one of his company killed a man in hunting in a Forreſt, and the Lord *Dacres*, and the other hunters, as *Mantel*, and others were principals, and were all hanged. 34.*H.*8.*B. Corone.* 171. 1.M.1. Com. 98. See Coke. Lib. See 33. H.8. Tit. Triall.

A man ſhall not plead that the dead aſſaulted him, and in his own defence, *&c.* but not guilty in an appeal, and give it in evidence, and murder cannot be juſtified. See *Tit. Appeal.*

Note,

11. H. 7. 20. accord. by Fineux.

Note, by the Justices, that tis felony to kill a man in Justing, or where men play at sword and buckler, and the one kills the other, and the like notwithstanding the commandement of the King, for twas against Law. *Time. H.* 8. B. *Corone.* 228.

1. E. 3. 4. by Borous.

Note, by all the Justices, that if a man be indicted of felony, in the time of *H.* 8. the King dies, he shall be arraigned for it in the time of *E.* 6. But by some this indictment shall be removed by *Cerciorari* from the antient *custos Rotulorum*, and put to the new commissioners. 1. *E.* 6. B. *Corone.* 177.

See 38. H. 8 Tit. Oyer & Terminer.

44 E. 3. 43. accord.

Note, that Indictments and Records, which are taken before Justices of *Oyer* and *Terminer*, and not determined before their commission be ended, these shall be put into the Kings Bench to arraign the parties there. *S.* by *Cerciorari* out of the Chancerie, which shall be to commissioners of *Oyer* and *Terminer*, and after shall be sent into the Kings Bench by *Mittimus* (B. *Corone.* 178. *Oyer* and *Terminer.* 2.) But indictments taken before Justices of Gaol delivery, and not determined, shall be delivered

delivered to the Clerk of the peace, or ſhall remain with the *cuſtos rotulorum* of the County, where, *&c.* and when other Juſtices of Gaol delivery come there, they may proceed upon them upon judgement of death, and this by Statute. And *B.* ſeems that they ſhall proceed by the equity of the words, to allowance of Clergy or Sanctuary; and the like. 1. *E.6. B. Corone.* 178.

See Tit. Commiſſion the end. 1. E. 6. cap. 7. Clergy. Sanctuary.

Note, that twas holden, that where a ſtable is near a houſe inheritable, as parcell of the houſe, and a man breaks it by night, to the intent to rob in it, tis felony, though he takes nothing, for tis burglary. 2. *E.* 6. B. *Corone.* 179.

See Tit. Commiſſion the end. See Cokes Rep.

Burglary ſhall not be judged, but where there is breaking of a houſe by night. And by the Juſtices, where the principall and acceſſarie are arraigned, and the principall hath his Clergie, this ſhall not ſerve the acceſſarie, but he ſhall be arraigned and hanged, where both are found guilty. 4. *E.* 6. *B. Corone.* 184.

St. 30. B. 3. H. 7. 12. by Juſtices. See St. 47. H. 8. Cokes 4. Book.

A man is indicted as acceſſary to a felony, and acquitted, and after is indicted

dicted of the same felony, as principal, he shall be arraigned and hanged, notwithstanding the acquittal as accessary. And so was *Thomas Knightly* first indicted and arraigned as accessary of *I.S.* and acquitted, and after was indicted of the same murder as principal; and arraigned of it again. 4. *E.* 6. *B. Corone.* 185.

A woman took the Church for felony, and abjured the Kingdome. 6. *E.* 6. *B Corone.* 213.

5. E. 6. E. 6 cap. 11. Note, that 'twas agreed by all the Justices at *Serjeants* Inn in *Chancery* Lane 25 *Octob.* 1556. as to the Trial of Treason, and misprision of Treason, that by the Statutes, 2 accusers or testes ought to be at the indictment, or the sayings and accusations in writing under their hands, or the testimony of others of the same accusation, which shall be read to the Jury at the indictment; and if the accusers are dead at the time of the indictment, yet it suffices if the accusation be there testifying it, for then there were two accusers. But for any Treason *de Anno* 25. *E.* 3: there needs no accusers at the trial, because that 'tis enacted by the Statute of 2. *M.* 1. *cap.* 10. That all trials of Treasons,

Rast. Treason 23. St. 9. A.

ſons, ſhall be by the order of the common Law onely, *& non aliter*. And the common trial by common Law, is by Jurie, and by witneſs, and by no accuſers. And the ſame Law of Treaſon of coyning, that accuſers need not at the arraignment, but at the indictment *ut ſupra* onely. But for all treaſons done by the ſaid Act of 2. *M.* 1. there ought to be witneſſes, or accuſers, as well at the indictment, as at the arraignment, according to an Article contained in the ſaid Statute, in Fine. And for miſpriſion of treaſon there ought to be witneſſes, or accuſers, as well upon the indictment, as upon the arraignment, by the Statute of 1. *E.* 6. *cap.* 12. the end, for the ſaid Statute of Q. *Mary*, doth not reſtrain accuſers at the trial, but only in caſes of treaſon, and not for miſpriſion. And twas agreed that petty treaſon ought to be tried as high treaſon, S. by accuſers by indictment; But at the trial there needs not accuſers, And at this reſolution, wer Sir *William Portman* chief Juſtice, Mr. *Hare* Maſter of the Rolls, Sir *Robert Brook*, Sir *David Brook*, Sir *Humfrey Brown*, Sir *John Whiddon*, Sir *Edward Saunders*, Sir *William Stampforde*,

Raſt. Treaſon 18.

forde, and Master *Dalyson*, Justices, *Dyer* Serjant, and *Griffine*, and *Cordell* Attorney and Soliciter. And twas agreed, that Counsellers who give evidence against Traytors, are not accusers. And by the Civill Law, accusers are as parties, and not witnesses, for witnesses ought to be indifferent, and not come till they are called, but accusers offer themselves to accuse, for tis a good challenge to witnesses, to say, that he was one of his accusers. 4. *M.* 1. B. *Corone.* 219.

St. 116. 'Twas said for Law, that a man cannot abjure for high treason. Quære of petty treason, for tis manifest in a Chronicle in the time of *H.* 6. that a woman that killed her Mistres abjured the Realm. 5. *M.* 1. B. *Corone.* 180. the end.

Manningt'. and another were indicted of felony in the high way in the County of *Bedford*, for robbery of one *Edward Keble* Clerk with daggs, & the indictment and the body were removed into the Kings Bench, and there they were arraigned, and pleaded not guilty to the countrey, and were tried. But after a writ was sent with the body into the countrey with *Nisi prius* to trie them in the county of *Bedford*. And this

this is a common courſe, ſo to remove the body and the Record out of the Kings Bench to the countrey again. 4. *M.* 1. B. *Corone.* 230.

A man takes Church, and the Coroner comes to him, and demands of him for what cauſe he does it, who ſaid that he would be adviſed by 40. days before that he would declare his cauſe, the Coroner may draw him out preſently; but if he will confeſs to him felony, he may remain there by 40 days, before that he abjures. Otherwiſe where he takes Sanctuary, as *Weſtm'. Knoll*, and the like, for this may hold him for term of life, except in caſe where a Statute changes it (B. *Corone* 180. *Sanctuary.* 11.) But if he will abjure within the 40 days, the Coroner ſhall give him a certaine day to doe it. (B. *Corone ſupra.*) None ſhall take priviledg of the church, except that he be in danger of his life (B. *Corone.* 181.) Nor none ſhall have the priviledg of Sanctuary except he in *periculo vitæ.* And note that Sanctuary cannot have a lawful commencement, *Niſi pro vita hominis*, as for treaſon, felony, or the like; and not for debt, therefore where a grant, or preſcription is to have Sanctuary

Lectura. W.N. Time. H. 7.

ary for debt, tis worth nothing, for tis againſt the Law. But if his body were in execution, and he eſcapes, and comes to a Sanctuary ordained for ſafeguard of the life of a man, he ſhall enjoy it, for by long impriſoment his life may be in jeopardy. And if the church be ſuſpended for bloodſhed, yet he which takes the church for felony, ſhall enjoy it by 40 daies (B. *Sanctuary ſupra.*) There are two manner of Sanctuaries. *S.* private, as *Weſtminſter Knoll*, and the like. And general ſanctuaries, as every church (B. *Corone.* 181. the end.) Abjuration for felony, diſcharges all felonies done before the abjuration. A man cannot abjure for petty larceny, but for ſuch felonies for which he ſhall ſuffer death. *Lecture B. Corone.* 182.

See St. 6. C. Note, that theſe words (*Quod pred. vitam & membra*) in a Statute, are intended felony, without the word of felony in it. *Regula* (B. *Corone.* 203.)

Corporations.

1. E. 4. 7. Mark. accord. Note, that the Juſtices of the common bench accords in caſe of a corporation, that known by the one and the other, in a ſuite by a name known, is no

no plea for the plaintiff, for he ought to acknowledge his proper name. But if the defendant be named by the plaintiff by a name known, though the defendant be corporate, it ſuffices. Yet Quære, if there be not a diverſity betwixt an action real, and an action perſonal. 25. H. 8. B. *Corporations.* 82. 21. H. 6. 4. by Newton. See 20. H 6. 29.

By *Fitz.* If the Abbot and Covent ſel all the lands and the Abby, yet the Corporation remains Quære by B. of what he ſhall be Abbot, for there is no church nor monaſtery. And by him Quære if the Abbot die, if they *S.* the Covent, may chuſe another, the houſe being diſſolved 32. *H.* 8. *B*, *Corporations.* 78. See *Tit Extinguiſhment.* See 10. H 8. 10. See Coke lib.

The King makes a Duke or Earl, and gives to him 20. *l.* of land, or the like, by the ſame name, ſo that the creation and the grant, is all by one and the ſame patent, yet tis good. And the ſame Law of making a corporation and giving to them land by the ſame patent, and name. 2. *E.* 6. *B. Corporations.* 89. See 2. H. 7. 13. by Keble.

Coſtes.

Note, by *Spilman* Juſtice, that at common Law, a man ſhall recover coſts 9 H. 6. 32 by Newton. 27. H. 6. 18.

in a *Quare impedit*: but otherwise, after the Statute of *Westm.* 2. cap. 5. becuse the Statute gives great dammages in a *Quare impedit*. 22. *H.* 8. B. *costes* 25.

T. 4. M. 1 accord. Note, where an action penal is given by Statute, to recover a great summ by action of Debt for ingrossing, or the like, there the Plaintiff shall not recover costs nor dammages in this action of Debt 35. *H.* 8. *B. Dammages* 200. *costs* 32.

23 H. 8. c. 15. Rast. dam. 6. Twas said, That if a Lessor brings Debt against his Lessee for years, for Rent, and the Plaintiff is *nonsuit*, or if the inquest pass against him, he shall render costs to the Defendant by the Stat. for a Lease for years rendring rent, is a contract. 2. *M.* 1. *B. costs* 23.

Covenant.

Where an assignee shall be charged with the Covenant of his Grantor. See Tit. *Assignee*.

Plea of Covenants perform generally, without shewing how, is no good plea, See *Tit. conditions*.

Stat. 1. 8. Tis said by the Justices, That a Writ of Covenant lies upon an Indenture, without

without this word Covenant and grant for him, his heirs and executors. 1 *M.* 1. B. *covenant* 38. the end.

Coverture.

Note, that a Statute Staple, nor Deed enrolled, shall not be accepted of a Fem Covert, by the Common Law: contrary, by the custom in *London* of a Deed enrolled; for this shall binde in *London* as a Fine at Common law, (B. *coverture* 59. 76. the end.) 19 H. 8. 19. See Coke l. 19. Mary Portingtoes case. 29 H. 8. See 30. H. 8. Tit Fines.

Nor a Fine, Statute, nor Deed enrolled, shall not be suffered by an Infant. 32. *H.* 8. B. *coverture* 59. the end.

Count.

Precipe quod reddat against Tenant for life, who prays in aid of him in reversion, who appears *gratis*, and joyns in aid; and the Demandant counts *de Novo* against the Tenant, and the Prayee, and they vouch the common Voucher, and suffer recovery for assurance. And yet tis said, That the Priee shall not have *Oyer*, but of the Count. *cusus* 22. *H.* 7. B. *count* 87.

Court Baron.

'Twas said that the Lord of a Mannor cannot hold Court, nor do justice without two Suitors: and if they die, or if that there be but one suitor, the mannor is determined; for tis not a Mannor without Suitors. 23. *H.* 8. B. *Court baron* 22. the end.

See 33. H 8. Tit. Mannor.

If an underſteward holds a Court Baron, and grants Copy-holds to be Tenants by Copy of Court Roll, without authority of the Lord, or high Steward, this is a good grant; for *in plena curia*. Contrary if he doth it out of Court, without ſuch authority. Yet the high Steward may demiſe cuſtomary land by copy out of Court by ſome. *Quære* thereof by B. if he hath not a ſpecial authority from the Lord to demiſe. 2. *E.* 6. B. *Court baron* 22. *Tenant by copie*, 26.

Cuſtoms.

Information in the *Exchequer* againſt a Merchant for lading Wine in a ſtrange Ship; the Defendant pleads the licence of the King made to I. S. to do it, which

which I. S. had granted his authority thereof to the Defendant *& quod habeatur consuetudo inter mercatores per totam Angliam*: that one may assigne such a licence over to another, and that the assignee shall enjoy it, *&c.* to which twas demurred in law: and twas agreed for law, That a man cannot prescribe a custom *per totam Angliam*: for if it be *per totam Angliam*, this is the Common law, and not a Custom: contrary, if the custom had been pleaded to be in such a City or County, as *Gavelkinde*, *Borrow-English*, *Gloceſt. Fee*, and the like, 35. *H.* 8. *B. Customes* 59.

Dammages.

19 H.6. 10.27.H 8.2.contra.3.M 1.See tit. Abridgment.

NOte in Treſpaſs local, That upon an inqueſt of Office to enquire of Dammages, the Court may abridge, or increaſe them. But otherwiſe upon the Principall, S. upon iſſue tryed betwixt party and party, (but there it may encreaſe coſts.) For the party is at his attaint: but upon an inqueſt of Office he cannot have an attaint, 34.*H.*8.*B. dammages* 144. See *Tit. coſts.*

34 H. 6. 12. by Moyle.

Default.

22 H. 6. 14. per. cur.

If a woman be received in default of her Husband, and after ſhee makes default, judgement ſhall be given upon default of the husband; and no mention ſhall be made of the receit. *Time H.* 8.B. *default* 85.

De-

Inquiſition found that *I. S.* held certain land of the King, *ut de honor ſuo Glouceſter*, which is not in *Capite*, upon which proces iſſued againſt *W. S.* who had intruded, *&c.* and to ſue Livery: and becauſe that this Tenure is not in *capite*, and therefore Livery not due; the party demurred upon the record; for tis no cauſe of Livery. And where a man declares upon a Statute, and recites it otherwiſe then tis, or pleads it otherwiſe then tis, the other may demur upon it; for no ſuch Law if it be miſrecited. 32 *H.* 8. B. *Demurrer in Law* 25. See Tit. Livery. See 33 H 8. Tit. Parliam.

Denizen. See Tit. Alien

Note, for Law, That where an Alien born comes into *England*, and brings his ſon with him who was born beyond Sea, and is an Alien as his Father is, there the King by his Letters pattents cannot make the ſon Heir to his Father, nor to any other: for he cannot alter his law by his letters Pattents, nor otherwiſe, but by Parliament; for he cannot diſinherit the right heir, nor diſappoint the Lord of his eſcheat: and the ſon of an Alien, which ſon is born in *England*, he See Tit. Reſtitution. and *Coke* upon Lit. the beginning.

is English, and not an Alien, 36. *H.* 8. *B. Denizen* 9.

Deputie.

Tis said that a Deputation of an Office which lies in grant, ought to be by Deed, and not by word, 28. *H.* 8. *B. Deputy* 17.

Detinue.

27 H.8. 13. cont. by Fitz. By *Shelley* and others, if a man meddle with goods, as by trover of them, he shall be thereof charged, though that he deliver them over before action brought, 32. *H.* 8. *B. Detinue de biens* 1. The end.

Debt.

Where Debt lies, and where a *Scire facias*? See Tit. *Age.*

Debt upon Indentures of Covenants: where the Defendant had Covenanted to do many things, and the Plaintiff the like, to do many other things, *ad quas quidem conventiones per implendam uterque obligatur alteri* in one hundred pound, and the one breaks Covenant, by which the other brings Debt, and the Defendant pleads payment

ment of ten pound to *D.* which was all to which he was bound: judgement if action, and no plea *per curiam*, because he did not shew thereof a Deed, where the Plaintiff declared upon the Indenture, which is a Deed, And yet otherwise in pleading of payment of Rent reserved upon a Lease for years, made by Indentures: For there he may levy it by distress, and therefore an averment may come in ure. Curia. 45 E. 3. 5 Chetle accord.

But otherwise where all rises by specialty, where it lies in payment. 25. H. 8. B. *Debt* 173.

Debt upon an obligation with Condition, where the condition is not broken, by which he is barred, he shall never sue this obligation again: for once barred *est pro imperpetuo*, 29. H. 8. B. *Debt* 174. B. debt 126. the end accord.

Administrator of a Lord brings an action of Debt for relief, which fell *tempore intestati*, and the Defendant pleaded in Bar, and traverled the Tenure, and so at issue. See Coke l. & his Lit.

And therefore B. seems that the action lies clearly for him: for the Defend. did not demur: so if it be brought by an Executor of the Lord for relief due to the Testator, *Rot.* 529: in 9 H. 6. 13. by Rolfe.

in the Common Bench. 32. *H.* 8. B. *debt* 193. *Relief* 11. the ends.

Deviſe.

The ſame caſe 34 H. 8. at S. Albons

Not, that a Feme Covert with aſſent and will of her husband, may make her Teſtament, and deviſe the goods of her Husband; yet if the Husband prohibit the probat of the Teſtament of the Wife after her death, then all is void: For the husband may countermand it: B. *deviſe* 34. the end. *Teſtament* 21. the end.

Lit. 37. N. B. 86. And a Deviſe by the husband to his Wife is good, though they are one and the ſame perſon in the Law; for the deviſe takes not effect till after the death of the husband, and then they are not one perſon, 24. *H.* 8. B *Deviſe* 34.

15 H. 7. 17. by Fineux. 3. M. 1. Com. 158 Twas agreed by all, that if a man wills that *I. S.* ſhall have in his Land in date after the death of his Wife, and dies, now the wife of the Deviſor by theſe words ſhall have the Land for her life, by reaſon of the intent of the Will. 29. *H.* 8. B *deviſe* 48.

4 H. 7. 10 D. S. 21. Note, That in London a man may Deviſe by Teſtament to a common perſon,

ſon, though the Teſtament be not enrolled: but if he Deviſes in *Mortmain* he ought to be a Citizen, and a Freeman reſident: and the Teſtament ought to be enrolled at the next Huſtings. 30. *H.*8. *B. deviſe* 28. See 45 E. 3. 26.

A man Deviſes to two *& heredibus eorum*, and dies; and after one of the Deviſees dies, and the other ſurvives, he ſhall not have the intire by Survivor, but onely a moytie; for this was the intent of the Deviſor: by *Audley Chancellor* of *England*, B. *deviſe* 29. and by B. there the end. If one deviſe to another *in feodo ſimplici*, the deviſee hath a Fee ſimple. 30. H. 8. Perk. 106. G.

A man wills that his land Deviſable ſhall be ſold by his Executors, and makes four Executors, and dies, all the Executors ought to ſell, for the truſt is put joyntly in them. *Quære*, for B. ſeems, That if one or two die, that the three or two which ſurvive, may ſell; for there is the plural number, Executors: and death is the act of God (B. Deviſe 31.) and by him where ſuch will is made, and ſome of the Executors refuſe, and the other prove the Teſtament, thoſe, or he which proves the Teſtament may ſell by the Statute, (B. *deviſe* 29. 31.) See Coke upon Lit. 21 H. 8. c. 4. Raſt. Probat. of Teſt. 3

31.) where tis expreſſed that twas doubted at Common Law, if the ſale by one executor were good, or not (*B. Deviſe* 31.)

See Coke upon Lit

And by ſome, where a man wills that the Land ſhall be ſold *poſt mortem I. S.* by his Executors, and makes four Executors, and dies, and after two of the Executors dies, and after *I. S.* dies, there the two Executors that ſurvive may ſel, for the time is not com til now, 30. *H.* 8. B. *Deviſe* 31.

Twas ſaid that *Baldwin*, *Shelley*, and *Montague*, Juſtices, determined for Law, That where a man hath Feoffees to his uſe before the Statute of uſes made 27. *H.* 8. and after the ſame Statute; and alſo after the Statute of 32. *H.* 8. of Wills, he wills that his Feoffees ſhall make an eſtate to W. N. and his heirs of his body, and dies, that this is a good Will and deviſe *ratione intentionis*, &c. 38. *H.* 8. B. *Deviſe* 48. the end.

See Coke upon Lit & Tit. Mortmain.

If a man deviſes his land to be ſold by his Executors, and dies, the heir enters, and after is deſeiſed, yet the Executors may ſell, and the Vendee may enter, B. *Deviſe* 36. *Entre congeable.* 134. the ſame Law if the heir ſuffer a Recovery

or,

or levies a Fine. And the ſame law by ſome, where a man diſſeiſes the heir, & dies ſeiſed, and his heir enters, the Executors ſhall ſell, and by the vendee may enter; for he hath no right, nor no action is given to him: for he hath but a Title of entry by the ſale, and therefore he may enter, for otherwiſe he hath not any remedy, by *Hales* Juſtice 1. *E.* 6. *B. Deviſe* 36.

Agreed for good Law, that the occupation of a Chattel may be deviſed by way of Remainder, but if the thing it ſelf were deviſed to uſe, the Remainder is void; for a gift or deviſe of a Chattel for an hour, is for ever; and the donee, or deviſee may give, ſel, and diſpoſe it, & the remainder depending upon it, is void, *Time H. 8. B. Deviſe* 13. the middle. Where a man deviſes that W. O. ſhal have the occupation of his plate for term of his life, and if he dies, that it ſhal remain to I. S. this is a good remainder: For the firſt hath but the occupation, & the other after him ſhal have the property, 2. *E.* 6. *B. Deviſe* 13. the end. Note if a man hath iſſue 3. ſons, and deviſes his Lands: S. one part to the two of his Sons in Tail, and another part to the third ſon in Tail, and that

See 2. E. 6. after. & Tit. Chattels.

See before & Tit. chat.

none

none of them ſell any part, but that every one ſhal be heir to the other, & dies; that in this caſe if one dies without iſſue his part ſhall not revert to the eldeſt ſon; but ſhall remain to the other ſon: for theſe words (*That every one ſhall be heir to the other*) implies a Remainder; becauſe that tis a Will, which ſhal be intended and adjudged according to the intent of the Deviſor. 7. E. 6. B. *deviſe* 38. *Done* 44.

19 H. 8. 9 by Norwich. Fitz. & More See Coke upon Lit.

A man Deviſes his Land to another, for to give, ſell, or to do with it at his pleaſure; this is a Fee-ſimple: for his intent ſhall be taken to give a Fee-ſimple. 7. E. 6. B. *Deviſe* 38.

Note, by *Bromley* Chief Juſtice, and others; where a man Deviſes his land to a ſtranger for Term of years, the Remainder to his ſon in Fee, and dies; the ſon may waive the Deviſe, and claim by diſcent, and yet he ſhall not avoid the Term: No more then where a man Leaſes for years, and dies, the Leaſe is good: and yet the dying ſeiſed is good alſo to toll the entry, *B. deviſe* 41. And *B.* ſeems where the Father deviſes to his ſon and heir in Fee, that the heir may waive the Deviſe, and take himſelf to the diſcent, (*F. Diſcent* 4.) Contrary, where

where the Father Deviſes to his ſon in Tail, the remainder to a ſtranger in Fee, there the Heir ſhall not claim in Fee, nor waive the Deviſe, for the loſs and prejudice of him in remainder in Fee. 2. *M.* 1. *B. Deviſe* 41.

Tenant in Tail of Land Deviſable, diſcontinues in Fee, and retakes in Fee, and Deviſes to a ſtranger in Fee, and dies, the iſſue in Tail is remitted; for nothing is diſcended to him by reaſon of the Deviſe, which Tolls the diſcent, except that the Deviſee waives it. 4. *M.* 1. *B. Deviſe* 49. *Remitter* 52.

Divorce.

What divorce may Baſtardize the iſſue? what not? See Title Baſtardie.

Note, for Law, That where the huſband and wife are divorced where ſhee is an Inheritrix, yet mean acts executed ſhall not be reverſed by the divorce; as waſte, receit of Rents, taking of Ward, preſentment to a Benefice, gift of goods of the wife, otherwiſe of inheritance, as if the husband had diſcontinued, or charged the land of his wife, *cui ante Divortium* lies. The ſame of a releaſe

releaſe of the husband, or Manumiſſion of villains, or the like. And if the husband and wife purchaſe joyntly, and are diſſeiſed, the husband releaſes, and after are divorced, the wife ſhall have the Moytie, though there were not Moyties before the divorce, for the divorce converts it into Moyties. 32. *H.* 8. B. *Deraignment* 18.

See Coke upon Lit.

Diſcent.

If Land be given for Term of life, the Remainder to the right heirs of W. N. which W. N. is attainted of Felony, and dies, and after the Tenant for life dies, the Remainder ſhall not take effect, nor none ſhall have the Land; for he hath not heir *ratione attinctura*. And though all be a name of purchaſe, yet none can take it, but he which is heir, (B. *Diſcent* 59. *Done* 42.) And where Land in *Gavelkinde* is given to one for life, or in tail, the Remainder to the right heirs of W. N. who hath iſſue 4. ſons and dies, and after the Tenant for life, or the Donee dies, the eldeſt ſon ſhal have the land, for he is right heir at Common Law, & this is a name of purchaſe, which ſhall be ordered by the Common Law. But

38 H. 8. B. Diſcents 59. accord. vide infra

But otherwiſe of diſcents to heires in Gavilkinde, for then it ſhall goe to all the ſons. 37.*H.* 8.*B. Diſcent, & Done.* 42.*Noſme.* 6. See 26.H 8.4. B. Done. 61.

Note, that Sir *John Huſſey* Knight, enfeoffed certain perſons in fee to the uſe of *Anne* his wife, for terme of her life, and after to the uſe of the heirs males of his body, and for default of ſuch iſſue, to the uſe of the heires males of the body of Sir *William Huſſey* his father, and for default of ſuch iſſue, to the uſe of his right heires, and after had iſſue *William Huſſey* the elder; and after Sir *John* was attainted of Treaſon. 29.H.8. and put to execution, and after *Anne* died, and the ſaid *William Huſſey* the ſon prayed an *Ouſter l'main* of the King. And by *Whorewood* the Kings Attorney he ſhall have it, for this name heires males of the body, is but a name of purchaſe, and Sir W.H. ſhall not have it as heir to Sir *John*, but as purchaſer. (*B. Noſme.* 1. *Livery* 1. *Diſcent.* 1.) As if land is given to a man and his heires males of his body, and he hath iſſue 2 ſons, the eldeſt hath iſſue a daughter, and the father, and the eldeſt ſon dies, the younger brother ſhal have the land, and yet he is not heir to his father. And the ſame Law where See 32.H 8. Tit. Livery. See Coke upon Litt.

Litt. 5. land is given to a man, and to his heirs females of his body, and he hath a ſon and daughter, and dies, the daughter ſhall have the land, and not the ſon. (B. *Noſme*. 1. 40.) And ſo where Tenant in tail is attainted of Treaſon before the Statute of 26. H. 8. his ſon ſhall have the land, for he doth not claim onely as heir, but by the Statute and *per formam doni* (B. *Noſme*. 1.) Yet ſome were of a contrary opinion, and took a Diverſity, where the gift is to the father himſelf, and where tis to the heires of his body by remainder (B. *Noſme*. 1. & 40.) And therefore in 9. H. 6. if lands are given for term of life, the remainder to the heires females of the body of *I. S.* who is dead, and hath iſſue a ſon and daughter, and after the Tenant for life dies, the daughter ſhal not have the land, for ſhe is not heir: for by *Hare* Maſter of the Rolls an antient apprentice, there is a difference betwixt a gift in poſſeſſion to a man and his heires females, *&c.* and a gift to a ſtranger, the remainder to the heirs females of another, for there he ought to be heir indeed when the remainder falls, or otherwiſe the rem' is void for ever. (B. *Done*. 61.) for though that the caſe holds

Litt. 169 3. E. Com. 237. c. 13 Raſt. Treaſon 12. W. 2. c. 1.

9. H 6. 24 by Ellerker. See Coke upon Litt.

holds place in the two caſes put by *Whorewood*, this is becauſe that the gift was once veſted which was in the father, and therefore good law there, otherwiſe in the principall caſe, where the rem'. is not veſted. Yet by ſome the opinion of *Whorewood* is the better, for where land is given to a man and his wife for term of life, the rem' to the heires males of the body of the man, this remainder cannot be veſted in the life of the wife, for tis not a tail in the man, by reaſon of the eſtate of the wife; yet, if he hath iſſue 2 ſons, and the eldeſt hath iſſue a daughter and dies, the father and mother dies, the younger ſon ſhall have the land., as heir male, and yet he is not heir indeed; The ſame Law, if ſuch gift were, the rem' to the heirs females of the body of the man, who hath a ſon and daughter and dies, the daughter ſhall have the land though ſhe is not heir; The ſame Law where land is given to *W.N.* for life, the remainder to *I.S.* for life, the remainder to the heires males of the body of the ſaid *W.N.* who hath 2 ſons, the eldeſt hath iſſue a daughter and dies, *W.N.* and *I.S.* die, the younger ſon ſhall have the land as heir male,

See before. B. Nosme 1. Whorwood. 35 H.8.

yet he is not heir indeed, but his Neece is heir to his father; for tis not matter of the first vesting, nor of the remainder, for where the first estate for term of life is executed, the remainder over *ut supra*, the remainder may depend in abeyance *quousque, &c. ut supra*. But otherwise of a remainder to the right heires, for none can have that, but he which shall be heir indeed. (*B. Nosme.* 40.) and therefore twas agreed, that the 2 remainders to the right heires of Sir *John Hussey* was forfeited by the attainder. 37. *H.* 8. *B Nosme.*

If land discends to the daughter within age, and after she is disseised, the disseisor dies and his heir enters, and after a son is born, he born shal avoid the discent, for he claims not as heir to his sister, nor was he in *esse* at the time of the discent. *Lecture. B. Discent.* 40.

Discontinuance of Possession.

See Tit. Assurances, &. Recovery in value.

Recovery against Tenant in tail, the reversion or remainder in the King in fee, shall binde the Tenant in tail, and the issue in tail, but not the King. But now by the Statute it shall not binde the issue in tail, but that he may enter. 32. *H.* 8. *B. Discontinuance of possession.* 32.

Note,

Note, that twas agreed in the case betwixt the King and *Anthony Lee* Knight, if the King Tenant in tail of the gift of another makes a lease for years, or for life, and hath issue and dies, the issue may make another grant without reciting them; for they are void by the death of the King Tenant in tail, who granted, and the heir of the King shall avoid it, so that this shall not binde but during the life of the grantor, for a grant without warranty or livery, is no discontinuance, and the King upon his grant doth not make livery. And also every discontinuance is a wrong, which the King cannot do; the same law if he had granted in fee, tis no discontinuance; (*B. Patents.* 101. *Discontinuance of Possession.* 35. *Tail.* 39. *Leases* 61.) And so see that the King may be Tenant in tail, for when a man gives to the King in tail, he cannot have a greater estate then the donor will depart with to him. 38. *H.* 8. *B. Tail.* 39.

The like was agreed 37 H. 8. B. Patents 101. See Time H. 8. Tit. Patents.

4 E Com. 250. 2. 1. B. Tail 39. & 4. E Com M 234.

Releaſe no Diſcontinuance.
See Tit. Releaſes.
Diſcontinuance of Proces.

Note, that a Diſcontinuance puts the party to a new originall, but where the Parol is without day, this may be revived by a re-ſummons or re-attachment, for the originall remains. *Regulæ. B. Diſcontinnance of proces.* 43.

Diſmes, Tythes.

Twas ſaid that if a Parſon demiſe his Glebe to a lay man, there he ſhall pay Tythes: contrary of the Parſon himſelf, that reſerves them in his proper hands. And that land firſt diſcharged of Tythes, ſhall be ever diſcharged of them. Yet if he which hath purchaſed a Mannor and Rectory, which is diſcharged of Tythes, Leaſes part of his demeanes, the leſſor ſhall have Tythes of that, becauſe that he hath the Parſonage. 32. *H.* 8. *B Diſmes* 17.

Diſſeiſor.

Twas ſaid for Law, if *A.* leaſes the land

land of *I.N.* to me for years, rendring rent, the lessee enters, and payes the rent to the lessor, the lessor is a disseisor, for countervails a commandment to enter, and he which commands is a disseisor, which note by his void lease. 23. *H.* 8. *B. Disseis* 77. T. 25 H. 8. accord Fitz. 179 G. See Coke upon Litt.

Distress.

Where land shall be charged with 2 distresses by Dower of part, and so of partition. See *Tit. Avowry.*

Note, for Law, that he which distrains beasts may put them into a close house, if he will feed them; for the distress in pound overt, is but to the intent, that the owner may feed them. 33. *H.* 8. *B. Distress.* 66. See 4. E. 6. Com. 68 by Mountague, and Coke upon Litt.

Twas agreed for Law by the Justices, that if a man distrain without cause, the owner may make rescous, but if he impounds them, the owner cannot justifie the breaking of the pound, and taking them out, for they are in *Custodia Legis.* 4. *E* 6 *B. Distress* 74. *Rescous.* 12. the end.

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Done, Gift.

Deviſee for life of a Chattell, the remainder over, he for life gives the Chattell, whether this ſhall barr the remainder. See *Tit. Chattells.*

See Tit. Grants.

Tis ſaid for Law, that if a man gives *omnia terras & tenementa ſua* in *D* by this leaſes for years do not paſs, for theſe words lands and tenements ſhall be intended free-hold at leaſt. 37. *H.* 8. *B. Done.* 41.

The difference betwixt a gift in Remainder, *Heredibus maſculis de corpore & rectis Heredibus.* See *Tit. Diſcent.*

See Tit. Preroga tive. 37. H 6 10. by Davers 26. H. 8. 8. cont.

Twas granted by *Shelly* Juſtice, and others, that if the King give a Chattell without deed, and the donee takes it by his commandment, tis good. 2, *E.* 6. *B. Done.* 16. the middle.

If a man gives or grants *omnia bona ſua*, leaſes for years, nor award, ſhall not paſs, for they are Chattels reals. And *B.* ſeems that a grant of *Prox' preſent. Eccleſiæ unica vice* is a Chattell, *& non bona*, for *bona* are goods moveable, living and dead, but not Chattels. 4. *E.* 6. B. *Grants.* 51. *Done.* 43.

Dower.

A woman ſhall not be endowed of a rent reſerved upon a leaſe of her huſband for term of life, for the rent is not an inheritance, and tis determinable upon the death of the Leſſee, and yet the heir ſhall have it, for tis incident to the reverſion. And where a man ſeiſed in fee, leaſes for years rendring rent, and afterwards takes wife and dies, the wife ſhall have dower of the land, but ſhall not have execution during the term of years, for elder title, *&c.* and ſhe cannot be indowed of the rent for the cauſe aforeſaid. 1. *E.* 6. B: *Dower:* 89. 7. H. 6. 3. by Jane Perk. 68. See *Coke* upon Lit. Dower. Perk. 67. Perk. 69.

Note, by the Juſtices, by the Statute where a man makes his wife joynt purchaſer with him after the coverture, of any eſtate of free-hold, except it be to him and his wife, and their heires in fee ſimple, this is barr of Dower, if ſhe agree to the joynture *poſt mortem viri*, otherwiſe of fee ſimple, for ſuch joynture is not ſpoken in the Statute. Nor a deviſe of land by the husband to the wife by teſtament, is no barr to Dower, for this is a benevolence, and not a joynture. 27. H. 8. c. 10. See Vernons c. *Coke*. l.

joynture. 6; *E.* 6. B. *Dower.* 69. B.

Dum non fuit compos mentis

See Coke Beverlies c. lib. Note, that if a Iudge or Justice be of *non sane memory*, yet the Fines, Judgements, & other records which are before him, shalbe good. But otherwise of the gift of an office or the like by him; for this is matter in fact, and the others are matters of record; for matters in fact may be avoided by *non sane memory*, otherwise of matter of record. 1. *M.* 1. B. *Dum non fuit compos mentis.* 7.

Ejectione Custod.

IT Was said that a man shall have a Writ *de Ejectione custodie* of a rent, and this before seisin of it; for seisin in Law shall be thereof adjudged, by reason that he cannot receive it before the rent day. Yet otherwise of land, for there he may enter. 23. H. 8. B.

14. H. 8. 23. by Brudnel.

B. *Quare ejecit infra terminum.* 5.

Enqueſt.

See Tit. Tryall.

Note, betwixt the King and the Biſhop of *Rocheſter* for Treaſon, the Biſhop ſhall not have Knights in his Jury. where Knights ought to be returned, when a Peer of the Realm, as a Biſhop, and the like, is party, yet quære, if it were challenged. 27. H. 8. B. *Enqueſt.* 100.

Twas holden in the common Bench by the Prothonatories, if a protection be caſt at the day of *Niſi prius*, and the Juſtices take the Jury *de bene eſſe*, and at the day in bank, the protection is allowed, now though the firſt taking is void, yet the Inqueſt ſhall not be recharged by reſummons, for when the Inqueſt is once ſworn, and give verdict, they ſhall never be ſworn again upon this iſſue. 2. *M.* 1. B. *Enqueſt* 86. 35. H. 6. 59. Moil accord.

Entre congeable. lawfull Entry

Tenant for term of life aliens to B. to have to him and his heires for term of life, of Tenant for term of life, this is no forfeiture, for all is but the limitation See 21. H. 8. 1. Fitz. & Brook, accord. 12. H. 8. 7. N. B. 124. 4. 167. 2. 14. H. 7. 6.

See Coke. l. 23. H.8. 39. 30. H 8. 143. book at large. 1. H.7. 22. 10. H.7. 20. by Keble 25. H.8. 70.

tation of the eſtate. *B. Forfeiture of lands.* 87.) And if Tenant for terme of life ſuffers a recovery, he in reverſion cannot enter, but is put to his Writ of Entrie, *ad terminum qui preteriit*, or Writ of Right, and ſhall falſifie the recovery in it, if he hath cauſe. (And if he will have it ſure, the Tenant for life ought to pray in aid of him in reverſion, and if he joynes in aid, and both vouch over, then well upon recovery had, *&c.* as betwixt *Corbet* and *Clifford* in the Countie of *Buck'* this year.) But if Tenant for life be impleaded, and prayes in aid of a ſtranger, he in Reverſion may enter, for this is a forfeiture. But if he doth not enter till the other hath recovered, then he cannot enter, but is put to his writ of Entrie, *ad terminum qui preteriit, vel ingreſ. ad communem legem*, and ſhall falſifie the recovery there. 24. *H.8. B. Entrecongeable.* 115. *Fauxifier.* 44. *Forfeiture of Lands.* 87. the end.

See 20. H. 8. after. See Coke upon Litt.

Ceſtuy que uſe in tail ſuffers a recovery againſt him upon a faint title before the Statute of Uſes, and dies, the Feoffees cannot falſifie it in an aſſiſe by

y way of entry, but ſhall have a writ of entry, *ad terminum qui preteriit*, or a writ of right, and ſhall falſifie it by this action. *B. Entre congeable.* 123. *Fauxifier.* 49.) And if he *Leuies* a fine with proclamation, and dies, if a ſtranger of his own head enters in name of the Feoffees, or to their uſe within the 5 years, this ſhall avoid the fine though the Feoffees did not command him; for by this the freehold is in them till they diſagree, or till another enters. 31. H, 8. *B. Entre congeable.* 123. the end.

Twas doubted, if a recovery had againſt *ceſtuy que uſe* in tail, ſhall binde the heire in tail. But by *Hales* Juſt. by ſuch recovery the entry of the Feoffees ſeiſed to the uſe of the eſtate taile is taken away, but after the death *ceſtuy que uſe*, who ſuffered the recovery, the Feoffees may have a writ of right, or writ of entrie, *ad terminum qui preteriit* in the poſt, or the like. And by ſome, there is no uſe in tail, but tis a fee ſimple conditional at the common Law, as twas of a tail before the Statute of *W.* 2. And this Statute makes not mention but of gifts in tail, which is tails in poſſeſſion. And therfore

See 29. H 8. 111. the book at large. and antea. See Coke upon Litt. 19. H. 8. 13. See Fines levies. W. 2 cap. 1.

fore quære, if the tail in uſe cannot be taken by the equity of it, yet twas doubted if the iſſues and the Feoffees ſhall be bound after the death of *ceſtuy que uſe*, who ſuffered the recovery, by reaſon of thoſe words in the Statute of 1.*R.*3. which wills that the recovery ſhall be good againſt the vendor, and his heires, claiming only as heir, and againſt all others, claiming onely to the uſe of the vendor and his heires, and this is intended by ſome of a fee ſimple, and in the caſe afore the iſſue in tail, claims as heir in tail in uſe. (*B. Feoffements to uſes.* 56. the middle.) Yet ſee the Statute of 32.*H.*8. that a Fine with proclamation levied, or to be levied by Tenant in tail in poſſeſſion, reverſion, remainder, or in uſe, after proclamation had, ſhall binde thoſe Tenants of thoſe tails and their heire for ever. And ſee that the ſame Statute is as well *pro temporibus preteritis, quam futuris.* 30.*H.*8.*B. Feoffements to uſes.* 57. the end.

1.R.3. cap.5. See before. 32.H.8. cap.36.

G.T. Knight ſeiſed in tail to him and the heires males of his body, diſcontinues, and retakes to him and *E.* his wife, and to the heires of their two bodies, and had iſſue, *T.* and *W.*

and

and died, and after *E.* his wife ſurvived, and *T.* had iſſue *E. nuptam T. W.* and died, and after *W.* by covin of *E.* his mother, Tenant in joynture, brings a *Formedon* upon the elder tail againſt his mother, and ſhe appeared the firſt day, and *W.* recovered by *Nihil dicit*, and *T. W.* and *E.* his wife heir to G. enters by the Statute of 11. *H.* 7. and the entry adjudged lawfull by the ſame Statute, which wills ſuch diſcontinuances, alienations, warranties, and recoveries ſhall be void (*B. Entre congeable* 140. *Judgement.* 153.) And it need not to ſay that the recovery was executed, for becauſe twas void, it ſhal never be executed. And *E.* the heir averred that he is the ſame perſon to whom the reverſion appertained, and ſhewed not how heir to it, and yet good by *Molineux*, and *Hales* Juſtices, *contra* *Brown* and *Mountague* chief Juſtice of the Common Bench. But all agreed that twas a recovery by covin, notwithſtanding twas upon a true title. And good, notwithſtanding he did not ſhew cauſe of covin. 32. *H.* 8. B. *Entre congeable.* 140. *Colluſion.* 47.

The like caſe betwixt Villiers and Beamont was adjudged in the Commō bench. T 4. M. 1. 4 E. 6. Com 42 11. H. 7. 20. Raſt Diſcontinuance of proces. 1.

Agreed for Law, that if land eſcheat to the King, which is in leaſe for years,

years, or charged with a rent charge, and office is found for the King of the eſcheat (the leaſe or grant not found in the office) the leſſee cannot enter, nor the Grantee cannot diſtrain, but if the King grant the land over, the leſſee may enter, and the grantee may diſtraine. But a man which claims free hold in the land, cannot enter without traverſe of the office, by *B.* 33. *H.* 8. *B. Entre congeable.* 124.

4. M. 1. Com. 175. 32. H. 8. cap. 34. Raſt. Com. 1. 4. E. 6. Com. 34 4. M. 1. Com. 177. See Coke upon Litt.

Note, that tis ruled in the Serjeants caſe, that where a common perſon leaſes lands for years, rendring rent with a clauſe of reentry, and after grants the reverſion over, the tenant atturns, the grantee may reenter for condition broken, by the Statute by expreſs words. And the ſame Law of the grantees of the King. *E.* 6. and all others heires to King *H.* 8. by the equitie of the ſaid Statute, which provides remedy for the patentees of the King. *H.* 8. And for grantees of common perſons. 4. *M.* 1. *B. Entre congeable.* 139.

Twas ſaid that where the intereſt of the King is certain and determined, the party may enter, quære by B. *Time. H.* B. *Reſeiſer.* 36. the end.

Error.

Error.

'Twas ſaid in the Kings Bench, where a writ of Error beares *teſte* before the firſt Judgement, and the Record is certified in the Bench, that 'tis good; and yet the Writ ſaith, *quod ſi judiciū reddit. ſit, tunc Record. & proceſs. habeatis, &c.* 5 *E:* 6. *B: Errour.*

Eſcape.

Debt upon an Eſcape, againſt the Sheriffe, who ſaid That before the Eſcape the Priſoner was condemned in the ſaid condemnation, and in Execution, *ut in narratione*, in the time of a former Sheriffe, who ſuffered him to Eſcape, and after re-took and impriſoned him, and was removed, and this Defendant was made Sheriffe, and after ſuffered him to Eſcape; judgement is, Of this ſecond Eſcape you ought to have your Action; and a good Plea, for he hath confeſſed and avoided the Plaint; for when the Priſoner firſt Eſcaped, and the firſt Sheriffe re-took and impriſoned him: This ſecond Impriſonment is no Execution

10 E. 4. 11 by Billing ſee Cooke lib. 3. Ridgways Caſe.

cution for the party, but the Party is put to his Action, for the Eſcape againſt the firſt Sheriffe, 5 *E: 6. B: Eſcape* 45.

Eſcheate.

Founderſhip cannot Eſcheate by death without Heir, nor bee forfeited by attaindor of Felony or Treaſon; for 'tis a thing annexed to the blood, which cannot be divided, as 'twas ſaid after the augmentation Court took commencement; for a man who is Heir to another, cannot make another to be Heir, *Time: H:* 8. *B: Corodies* 5. *the end.*

Note, by *Brown*, *Hales & Cooke*, Juſtices; if there bee Lord and Tenant by Fealty and Rent, the Tenant is diſſeiſed and dies without Heir, the Lord accepts the Rent by the hands of the ſaid diſſeiſor, yet hee may enter for the Eſcheate, or have a Writ of Eſcheate, and the receipt of the Rent no barre; for the Diſſeiſor is in by wrong: Otherwiſe if he had allowed for it in a court of Record, or had taken corporall ſervice, as Homage, &c. So of acceptance of Rent by the hands of

Fitz. 144 C.
Fitz. 144 N. accord
ſee Cooke upon Lit.

of the Heir of the Diſſeiſor, or of his Feoffee, which are in by Title, 7 *E*: 6. *B*: *Eſcheate* 18.

Eſſoign.

If the Tenant in a *Præcipe quod redd:* prayes the view by Attorney; his Attorney ſhall bee Eſſoyned upon the view: But if he himſelfe prayes the view in proper perſon; then *per plures*, none ſhall be Eſſoyned upon the view but the Tenant himſelf; for after Proceſſe upon a Voucher, he himſelf ſhall bee Eſſoyned, and by conſequence in like manner ſhall be upon the view. And note, That granting of an Eſſoyn, whereon Eſſoyn lyes not, is not error. Contrary of denying of Eſſoyn where it lyes, 33 *H:* 8. *B: Eſſoine* 116.

So of ayde prayer, 5 H. 7, 8, & 9.

Eſtates.

The King gives Land to *J: S: & heredibus maſculis ſuis*; and 'twas adjudged by all the Juſtices in the Exchequer Camber, that the Grant is void; becauſe the King is deceived in his Grant; for it ſounds in Fee ſimple; 27 H. 8. 27

Raſt. 60. M 9. & 10 Eliz. Com. 335. Lit. 6. & Cook upon it. Raſt 60.

ple; whereas it ſeems the King intended but an eſtate tail, which is not ſo expreſſed; and therefore now he is but Tenant at will. Otherwiſe in caſe of a common perſon, 18 *H:* 8. *B: Patents* 104. *Eſtates* 84.

27 H 8 29 cont ſec 24H 8 tit *Entre congeable*: & Cook lib.

'Twas ſaid for Law, That if a Feoffment bee made to *W: N:* during the life of *J: S:* theſe words (during the life of *J: S:*) &c. ſhall be void; for they are contrary to a Fee. Contrary of a Feoffment in Fee ſo long as *Pauls* Steeple ſhall ſtand, 21 *H:* 8. *B: Eſtates* 50.

21 E 4.16 by Gen ncy 4 E. 6 Com 28. 20 H 6 36 by Poroing. See Cook lib. & his Lit. fo. 8. b.

A man gives Land to two *& heredibus*, and doth not ſay *ſuis*; This is no Fee-ſimple: And 'twas ſaid that the reaſon is, becauſe that two are named in the Deed; and therefore 'tis incertain to which of them *heredibus* ſhall bee referred. But if there were but one in the Deed, then it ſhall be referred to the one only. But in a Deviſe 'twas ſaid by ſome, that the words afore are a Fee-ſimple. Contrary in a Gift and Feoffment; for the one ſhall bee taken by intendment, the other not, 31 *H:* 8. *B: Eſtates* 4.

A man gives land to a Husband and Wife

Wife for terme of their Lives, *& diutius eorum vivent.* the remainer to the Heirs of their bodies, this is a taile executed, by reaſon of the immediate remainer, notwithſtanding the words of the Statute, *quod voluntas Donatoris in omnibus obſervetur*, by all the Juſtices, 35 *H: 8. B: Eſtates* 78. Weſtm. 2. c. 1. Raſt. Tail. 16

By opinion in the kings Bench, If a man deviſeth his Land to *W: N:* ſol-*vend* ten pound to his Executors, and dies, the Deviſee hath a Fee-ſimple, by reaſon of the payment, without words, *Heredibus*, or *in perpetuum*, and this ſhall be intended the intent of the Deviſor: The ſame Law if a man ſell his Land to *W: N:* for twenty pound, this ſhall be intended a ſale in Fee-ſimple, without words, *Heirs*, for Conſcience &c. *& eſt equum & bonum*, which is a ground in every Law, 4 *Ed: 6. B. Eſtates* 78. See 29 H. 8. Tit. Teſtament & Cook upon Lit. &c Tit. Conſcience.

Eſtoppell.

If a man hath Liberties, Rent, Common, or the like, by preſcription, and after takes a grant thereof of the King by Patent, or of another by Deede, this determines his preſcription by

29. H. 8. See Tit. Contract. concluſion (*B: Preſcription.* 102. *E. ſtoppell* 210.) for Writing ſhall determine Contracts and matter in Fait, 33 H: 8. *B: Preſcrip.* 102.

30 H. 6. 2. by Forteſcue accord See Cooke upon Lit. Eſtoppell. 'Twas agreed that a ſtranger to a Fine or Recovery, ſhall not pleade it for *Eſtoppell*; *contra*, If hee claim the ſame Land under the Fine or Record, by thoſe which were parties, or claims the ſame Eſtate, or part of it, and that this eſtate continues, for then he is privy in the *Per*: 36 *H*: 8. *B*: *Eſtoppell* 216. *the end.*

33 H 6 7. by Laken D. 8. 33 If two joyn-Tenants are which hold of the King in chiefe, and the one releaſes to the other in Fee, and after both reſpit Homage in the Exchequor; by this, he which releaſed hath gained the moity by concluſion, as it ſhall be where two joyne in ſuite of livery out of the hands of the King, where the one hath nothing, by the opinion of ſome: And the ſame of Partition by two, where the one hath nothing, 37 *H*: 8. *B*: *Eſtoppell* 218,

Lit. 12. ſee Cook 34 H. 6. 48. Danby accord. ſee 5 H 7. 19 Note that a man which Leaſes by Deede poll for yeeres, or by Parol, may avoid this Leaſe to ſay, That hee had nothing in the Land, *tempore dimiſſionis*: Contrary, Upon a Leaſe by Indenture

Indenture, for this is an *Eſtoppell* 38 *H:* 8. *B. Eſtoppell* 8. 9 H. 6. 60. per Cur.

If a man Indicted of Extortion, or Treſpaſſe, puts himſelf upon the grace of the King, and makes a Fine, and after the party ſues him for it, by Bill or Writ, and he pleades Not Guilty, hee ſhall have the Plea, and the making the Fine to the King ſhall not eſtop him; for there the Entry is, *quod petit ſe admitti per Finem*, and doth not confeſſe it preciſely, and therefore no *Eſtoppell*: Yet *B* ſeemes to make the Fine by proteſtation that hee is not guilty, and then 'tis all cleere, *Time: H:* 8. *Eſtoppell* 82. 9 H. 6. 60. by Babington. See 38 H. 8. before.

A man pleads a Pardon of the King, in the Exchequer, for alienation, without Licenſe, where the Land is not holden of the King *in capite*: This is an Eſtoppell, to him to ſay after that, He doth not hold *in capite*, 7 *Ed: 6. B: Eſtoppell* 222. See Cook upon Lit. Jo.

By *Hales* and *Montague*, If a man Leaſes to *N.* his own Land, by Deed intended; the Indenture is no Eſtoppell, but during the Leaſe; and not after, *Caſus B: Eſtoppell* 221.

Estranger.

A: is bound to *B:* in a 100.l. and *B:* makes a Defeſance to *W: S:* That if *W: S:* payes 40.l. that the Obligation ſhall be void. This is worth nothing *per opinionem*; becauſe that *A:* that ſhould plead it, is a Stranger to the Deed : But where two are bound to me, and I make a Defeſance to one; this ſhall ſerve the other to plead, if he can ſhew it : as in Treſpas againſt two, a releaſe to one ſhall ſerve the other, if he can ſhew it, 34 *H:* 8. *B: Eſtranger al fait* 21.

Lit. 82. 14 H. 8. 10. by Brudnell. Huſſey accord. 22 E. 4. 7.

Estray.

If a man takes Beaſts as an Eſtray, and keeps them three quarters of a yeer, and after they ſtray from him, and another happens on them; the firſt Lord which kept them for three quarters, cannot take them again, becauſe that he had no property in them till hee had kept them a yeer and a day, and Proclamation paſſed in the two next Market Towns, and two Market dayes, the one in the one Town, and

Eliot accord. 12 H. 8. 10.

the

the other in the other; for the poſſeſſion of the ſecond Seizor is good againſt him who hath no property, 33 *H:* 8. *B: Eſtray* 11.

Executions.

Note, by *Fitz:* and the Court, If a man recover in a Writ of Annuity, he ſhall have a *Fieri facias* of the Arrearages incurred within the yeer, and a *Scire fac:* after, as ſoon as the Annuity is Arrear, and never a Writ of Annuity again; for 'tis executory, and the ſame Law of an Action, and Judgement upon compoſition, which is executory *de tempore in tempus*, and the like. And in every *Scire fac:* in which he recovers after the firſt Judgement, he ſhall have execution of the Arrearages within the yeer, by *Fiere fac:* for every one is founded upon the Judgement, 23 *H:* 8. *B: Executions* 119. *Scire fac:* 213. 11 H. 4. 34. by Thirning 6 E. 6. Com. 137. 2 H. 6. 9. caſ. 6.

By the whole Court in the Common-Bench, If two are bound in an Obligation *conjunctim & diviſim*, the Obligee impleads the one, and hath execution of his body; and after impleads the other, and condemns him, hee

hee may have execution againſt him alſo; for the taking of the body is a good execution, but 'tis no ſatisfaction; and therefore hee may take the other alſo. But if the one ſatisfie the Plaintiff, hee ſhall not have execution after; and therefore this Order, That the Plaintiff upon an Obligation ſhall have but one execution, is intended ſuch execution which is a ſatisfaction, and where both are impleaded by one originall, by ſeverall *Precipes*, &c. 29 *H:* 8. *B: Execution* 132.

4 H. 7. 8.
45 E. 3 4 by Thorpe

Scire fac: upon recovery of Debt and Damages; the Defendant ſaid, that once the Plaintiff ſued a *Capias ad ſatisfaciend.* by which the Sheriff had took his body, Judgement, &c. And there 'tis ſaid, That a *Capias ad ſatisfaciend.* is not of Record before the retorn of it; therefore no Plea: Yet *B:* ſeems the Plea good by the taking of the Body, though no Writ bee returned, 37 *H:* 8. *B; Executions* 6.

Executors.

6 E. 4. 1.
7 E. 4. 9 by Choke.

'Twas noted by *Fitz:* and others, That in an Action of Debt againſt an Executor,

Executor, 34 *H:* 6. upon an Obligation of his Teſtators, who pleaded not his Deed, and found againſt him, the Judgement by the Record was, That the Plaintiff ſhould recover of the dead, if hee hath any; and for that, the book at large, *fol.* 24. is reported further in theſe words; and if he have not, then *de bonis propriis*, which words are not in the Record; 'Twas cõmanded by them to mend the Book; for 'tis contrary to the Record, and ſo miſ-reported, 23 *H:* 8. *B: Executors* 22.

A man makes two Executors, and dyes; the one Executor makes an Executor, and the other ſurvives, and dyes inteſtate; the Executor of the Executor ſhall not meddle; for the power of his Teſtator was determined by his death, and by the ſurvivor of the other; ſo that now the Ordinary ſhall commit the Adminiſtration of the goods of the Executor which ſurvived, *& de bonis non Adminiſtratis* of the firſt Teſtator, 32 *H:* 8. *B: Executors* 149. Moile and Aſhton accord. 39 H. 6. 45.

A man makes *A:* and *B:* his Executors, and wills that *B:* ſhall not meddle during the life of *A:* and good; for 19 H 8 8. by Fitz. See Dyer. 19 H. 8.

for he doth not reſtrain his intire power; for he may make one Executor of his goods in *C:* and another Executor of his goods in *D:* and ſo he may divide the time *ut ſupra*, 32 *H:* 8. *B: Executors* 155.

Hales and Whorewood accord. 2 E. B. Surr. 52. the end See Cook upon Litt. Jo. See Tit. Extinguiſhment

A man hath a Leaſe for yeers as Executor *B:* and after purchaſes the reverſion of the Land in fee, the Leaſe is extinct. But yet the Leaſe ſhall be a-gainſt the Executor aſſets by *Whorewood* and *Hales* Juſtices. (*B: Extinguiſhment* 54. *Leaſes* 63. *Surrender* 52.) And if it ſhall bee extinct, *B:* ſeems to be a *devaſtavit ad ultim:* 4 *E:* 6. *B: Extinguiſhment* 57. the end.

Expoſition.

The ſeverall expoſition of *infra terminum* 10. *annorum & infra terminum predict:* See Tit: Conditions.

Extinguiſhment.

See 32 H. 8. Tit. corporation.

If the Abbot and Covent give all their Lands and Poſſeſſions to another in fee, yet the corporation remains by *Fitz:* Juſtice, 20 *H:* 8. *B: Extinguiſhment* 35.

Lord

Lord and Tenant; the Tenant is attainted of Treaſon by Act of Parliament, and to forfeit all his Lands; and after he is pardoned, and reſtored, by another Parliament, *habend. ſibi & heredibus*, as if no ſuch attainder, nor former Act had been. Or if the Heir of him who was attainted, be reſtored by Parliament in ſuch form; now the Seigniory which was extinguiſhed, is revived, and he ſhall hold of the common perſon as before; and yet once the tenure was extinct by the forfeiture of the Land to the King, 31 *H:* 8. *B: Extinguiſhment* 47. *Revivings* 8. *Tenures* 70. See 27 H. 8. Tit Parliament.

Lord and Tenant; The Tenant holds by third three Acres of Land, the Tenant infeoffs the Lord in fee, of one Acre; the Seigniory is extinct for the third part, and remains for the other two parts; but if the Tenant had let to the Lord one Acre for yeers, there the Seigniory is ſuſpended in the whole, during the term; for the Seigniory may be extinct in part, but not ſuſpended in part, but for the intire, 32 *H:* 8. *B: Extinguiſhment* 48. See Tit. Apportionment. Lit. 48. 11 H. 7. 13. by Davers accord. Perk. 16. C.

Where a Condition ſhall not be apportioned, but extinct, See *Tit: Conditions.*

A man

2 E. 6. B. Surr. 52. the end. See Tit. Executors and Surrendor.

A man hath a Leaſe for yeers as Executor *B.* and after purchaſes the reverſion of the Land in fee, the Leaſe is extinct; but yet the Leaſe ſhall be againſt the Executor aſſets, by *Whorwood* and *Hales* Juſtices. (*B: Extinguiſhment* 54. *Leaſes* 63. *Surrender* 52.) And if it ſhall be extinct, *B:* ſeems to be a *devaſtavit ad ultimum*, *Extinguiſhment* 57 the end. But where he hath it as Executor, & there is a mean Leaſe in reverſion for years, and hee purchaſes the reverſion in fee; the firſt Leaſe remains by reaſon of the mean remainder (*B: Leaſes* 63.) And by *Hales*, If a man Leaſes to another for ten years, and after Leaſes the ſame Land to another for twenty years; the firſt Leſſee purchaſes the reverſion in fee; yet the firſt Leaſe is not extinct, becauſe that the ſecond Leaſe, which is for twenty years, is mean betwixt the firſt Leaſe and the Fee-ſimple, which is an impediment of the extinguiſhment, 4 *E: 6. Extinguiſhment* 57.

Where an Action by Entry and Feoffment ſhall be extinguiſhed, See *Tit: Reſtor: al primer action.*

Faits,

Faits, Deeds.

NOTE, If an Action be ſued upon a Deed, bearing date at *Cane* in *Normandy*, 5 *Dat: apud Cane, &c.* That the Plaintiffe ſhall count that the Deed was made at *Cane* in *Com : Kanc :* and good; for the place is not traverſable (*B : Faits* 95. *the end*) And alſo where in truth it was written in *Cane*, 'tis ſuable in *England*, where it beares date at large, and at no place certaine : But if it bee (*dat : apud Cane in Normandy, &c.*) *quære* If the Action lyes, &c. *Time: H :* 8. 48 E. 3. per accord. See 34 H. 8 Tit. Action upon the Caſe. 21 E. 4 74 per Cur. ſee Cooke upon Lit. ſo.

Note, That 'twas agreed by the Juſtices, that this clauſe which comes after theſe words, *In cujus rei, &c. Sigillum appoſui, &c.* is not any part of the Deede, though 'twere written before the ſealing and delivery, 1 *M :* 1. *B : Faits* 72.

Faits inroll : Deeds inrolled.

Note, that a Deed of Husband and Wife

See 32. H. 8. Tit. coverture. 7 E. 4. 5. by Lit.

Wife ſhall not be inrolled in the common Bench, except for the Husband only, and not for the Wife; by reaſon of coverture : Nor ſhe ſhall not be bound with her Husband in a Statute-Marchant, nor the like : But if they make a Deed inrolled of Land in *London*, and acknowledge it before the Recorder and an Alderman, and the Wife examined; this ſhall binde as a Fine at common-Law, by their cuſtome, and not only as a Deede, and it ſuffiſeth without Livery of Seiſin, 29 *H* : 8. *B* : *Faits inroll* : 14. & 15.

See Tit. Fines, Levies.

12 H. 4. 21. ſee 37 H 6. 10 by Davers. 4 Eliz Con. 213. & 242

A man infeoffs the King by Deede, and makes Livery; this is worth nothing, for the King ſhall not take but by matter of record : But if he inroll the Deed, then 'tis good to the King without Livery, for the King takes not by Livery, 29 *H* : 8. *B. Faits inroll* : 16. *Feoffments* 69.

27 H. 8. ca. 16.

Note, by the Juſtices, That where two joyn-Tenants are, the one aliens all his Lands and Tenements in *D* : after the Statute of Inrollments, and before the Inrollment the other joyn-Tenant dies, ſo that his moitie ſurvives to the Vendor, and after the Vendor,

Vendor, within the halfe yeere, inrolls the Deede; yet nothing paſſes but the Moitie, for the Inrollment hath relation to the making and delivery of the Deede, ſo that it ſhall give nothing but that which was ſold by it at the time of delivery of the Deede: And by more Juſtices, Where a man ſells his Land by Deede Indented to one, and after hee ſells it by another Indenture to another, and the laſt Deede is firſt Inrolled, and after the firſt Deed is Inrolled, within the halfe yeere, there the firſt Vendee ſhall have the Land, for it hath relation to make it the Deed of the Vendor, and to paſse the Land *ab deliberatione facti*; for the Statute is, That a Free-hold, nor uſe of it ſhall not paſſe, nor change from one to another by bargain and ſale only, except it bee by Deed Indented and Inrolled within the halfe yeere; *Ergo*, if it bee by Deede Indented and Inrolled within the halfe yeere it ſhall paſſe as the uſe might paſſe at common Law, by ſale of the Land which was preſently upon the ſale, *6 E : 6. B : Faits Inroll : 9.*

See Tit. Conſcience.

Fauxifier, Falſefying.

Where he in reverſion ſhall falſifie a recovery had againſt Tenant for term of life, where not, See Tit. *Entre Congeable.*

Where the Feoffees may falſifie a recovery ſuffered by *Ceſty que uſe* in tayl; where not, See *Tit: Entre Congeable.*

'Twas holden that an attaint ſhall goe with the Land, as a Writ of Error ſhall, *Time: H:* 8. *B: Fauxifier* 50. the end.

Fitz 21. L.

Faux Impriſonment, falſe Impriſonment.

'Tis ſaid, That a man, as Conſtable, cannot Arreſt another for an Affray, after that the affray is paſt, without Warrant: contrary, before the Affray, and in the time of the Affray &c. And the ſame Law of a Juſtice of Peace, 38 *H:* 8. *B: Faux Impriſonment* 6. the end.

Faux

Faux Judgement, Falſe Judgement.

Note, by *Fitz:* for cleer Law, That in a Writ of falſe Judgement *in nullo eſt erratum* is no Plea; for they joyn iſſue upon ſome matter *in fait* certain alledged by the party, and ſhall bee tryed by the Country; for 'tis no Record, *contra*, in Error, 23 *H:* 8. *B: Faux Judgement* 17.

Fealtie.

Note, in the Chequer, That if Land deſcend to me, which is holden of *J: S:* by homage, and I doe to him homage; and after other Land deſcends to me by another Anceſtor, holden of him by homage, I ſhall doe fealty, but not homage again; for I became to him his man before. And if both the Tenements are holden of the King by homage; he ſhall not reſpit both the homages in the Exchequer; but one homage only, 24 *H:* 8. *B: Fealty* 8.

Note, in the Exchequer, That a Dean and Chapter, and other bodies politique, ſhall not doe homage; for this ſhall be done in perſon: And a

Corporation cannot appear in perſon, but by Attorney; and homage cannot be done by Attorney, but only in perſon, 33 *H:* 8. *B: Fealty* 15.

Feoffments.

9 E. 4 32. See 31 H 8. Tit. Leaſes 6 & 7 E. 6 Com. 86. by Hales Juſt. 4 M. 1. Com. 171. 6 & 7 E. 6 Com. 85 3. M. 1. Com. 168

A man makes a Feoffment of a houſe *cum pertinentiis*, nothing paſſes by theſe words *cum pertin:* but the Garden, the Curtilage, and Cloſe adjoyning to the houſe, and upon which the houſe is built, and no other Land, though other Land hath been occupied with the houſe, 23 *H:* 8. *B: Feoffments* 53.

27 H 6 2. 27 H 8. 23 by Fitz.

Note, by *Fitz james* ch: Juſtice, *Englefield* Juſt: and divers others, where a Diſſeizor makes a Feoffment for maintenance, and takes the profits, the Feoffment is void by the Stat: of 1 *R:* 2. *ca:* 9. as to a Stranger which ſhall have an Action, for he ſhall have it againſt the *pernour* of the profits; but 'tis not betwixt the Feoffor and the Feoffee. And alſo a man who vouches by ſuch Feoffment, one of the Feoffees, the Demandant, ſhall counter-plead by the ſame Stat: becauſe the Feoffment was void. And *B:*

21 H 6. Counterplea of Voucher 3.

ſeems

seems that such Feoffment shall not be a remitter in prejudice of a third person, 24 *H:* 8. *B: Feoffments* 19.

If a man makes a Feoffment to four, and the one of the four makes a letter of Attorney to *J: N:* for to take livery for him and his companions, who doth it accordingly; nothing passes, but to him who made the Letter of Attorney only, 27 *H:* 8. *B: Feoffments* 67. See Time. H. 8. after.

'Twas said for Law, That if a man Leases Land for ten years, and the same Lessee lets it over to another for four years; the Lessor makes a Feoffment to a Stranger by sufferance of the second Lessee; this is a good Feoffment without Attornment of the first Lessee, 28 *H:* 8. *B: Feoffments* 68.

'Tis said, That a Feoffment of a moity, is good, 31 *H:* 8. *B: Feoffments to uses* 19. Lit. 67. 21 E. 4. 22 by Rede accord.

If a man makes a feofmẽt of a house, *ac omnia terras, tenemeta et hereditamẽta eidem messuag: pertinen: aut cum eodem occupat: locat: aut dimiss: existen:* by this the Land used with the house shall passe, 32 *H:* 8. *B: Feoffments* 53. the end.

A man makes a Deed of Feoffment See 31 H. 8. Tit. Leases.

to another, and delivers the Deed to him in the Land, or upon the Land; this is a good Feoffment by all the Justices in the Common-Bench, 35 *H:* 8. *B: Feoffments* 74.

Accord Frow. 9 H. 7. 25. & 7 E. 4 20. 3. M. 1. Com. 154

If a man bee seized of one acre of Land in Fee, and another is seized to his use in Fee of another acre, and hee makes a Feoffment of both acres, and Livery of the acre which he hath in possession, by this the acre in use passes not, though he made the Livery in the one in the name of both, for this is not his acre, but the acre of the Feoffees, and the Stat: saies that his feoffment shall be good, but 'tis no Feoffment except hee makes Livery in the same Land: Otherwise if Livery were made in the Land, in use, by reason of the Stat: 37 *H:* 8. *B: Feoffments* 77. *Feoffments to uses*, 55.

1 R. 3. ca. 4.

If a Feoffment be made within the view, when this is pleaded; 'tis said that expresse mention shall be made in the pleading, that the Land was within the view, *Time H:* 8. *B: Feoffments* 57. *the end.*

Feoffment is good of the Land by Deede, by Livery of the Deed within the view, so that the Feoffee enters accor-

accordingly: But if the Feoffor dies before the Feoffee enters, then the Land is diſcended to the Heir of the Feoffor, and the Feoffment ſhall not take effect, *Time H: 8. B: Feoffments 72.*

A man makes a Feoffment by Deed to twenty, and delivers the Deed and Seiſin to one in the name of all, this is good to all; but if hee Infeoffs twenty without Deed, and delivers Seiſin to one in the name of all, this is no feofment to any but to him who takes the Livery, *Time H: 8. B: Feoffments 72.* 10 E. 4. 1. by Choke ſee 27 H. 8 before 40. E. 3. 41 by Finch 18 E 4. 12. by Collow & Towneſ.

Note, that by the Stat: of 1 *R:* 2. where a Diſeizor makes a Feoffment, for maintenance, and takes the profits; the Feoffment is void by the Stat: to all intents, *Lecture Wharwood 35 H: 8. B. Feoffments 19.* 1 R. 2 c 9. Raſt. Feoffments 1. See 24 H. 8. before.

Feoffments to uſes.

By *Shelly* Juſt: Where the Father Infeoffs his Son and Heir apparent, to the intent to defraud the Lord of his Ward, this Feoffment was to the uſe of the Father, during his life, and hee takes the profits during his life, and ſo See the next ſect. *prope fine.* 33 H 6. 16 by Priſot.

ſee that uſes were in antient times, 24 *H:* 8. *B: Feoffments to uſes* 20. *the end.*

See Cook upon Lit. A man makes a Feoffment in Fee, to four, to his uſe, and the Feoffees make a gift in tayle without conſideration, to a ſtranger, who had not conuſance of the firſt uſe, *habend:* in tayle, to the uſe of *ceſtuy que uſe*, and his Heirs; the tenant in tayle ſhall not be Seiſed to the firſt uſe, but to his own uſe, for the Stat: of *Weſtm:* 2 *cap:* 1. wills, *quod Voluntas Donatoris in omnibus obſervetur*; that a man ought to refer his Will to the Lawe, and not the Lawe to his Will: Alſo none can bee Seiſed to the uſe of another, but hee which may execute an Eſtate to *ceſtuy que uſe*, which ſhall bee perfect in Law, which tenant in tayle cannot doe; for if hee executes an Eſtate, his Iſſue ſhall have a *Formedon*; And the beſt opinion that an Abbot, Mayor and Commonalty, nor other Corporations ſhall not bee ſeiſed to a uſe, for their capacitie is only to take to their own uſe: And alſo if the Abbot execute an eſtate, the ſucceſsor ſhall have a writ of Entry *ſine aſſenſu capituli*: and thoſe that are in the

Weſt. 2. ca. 1.

27 H. 8. 10 by Montague. See Cook lib. 1. Chudleighs caſe

poſt,

oſt, as by *Eſcheate, Mortmain, Per-*
quiſite of *Villeine, Recovery, Dower*
y the courteſie, and the like, are ſei-
ed to their own uſe and to another
uſe: And alſo the Stat: of 1 *R*: 3. is,
That all Gifts, Feoffments & Grants
of *ceſtuy que uſe* ſhall be good againſt
ll, &c. ſaving to all perſons their
ights and intereſts in tayl, as if this
Stat: had not been made; and there-
fore Tenant in tayl ſhall not bee ſei-
zed to a uſe. And 'twas agreed by the
Court, That the words in the end of
the Stat: of 1 *R*; 3. ſaving ſuch right
and intereſt to the Tenant in tayl, &c.
is taken Tenant in tayl in poſſeſſion;
and not Tenant in tayl in uſe: for
ceſtuy que uſe in tayl hath no right nor
intereſt. And alſo here there is a
Tenure betwixt the Donors and the
Donees, which is a conſideration that
the Tenant in tayl ſhall be ſeized to
his own uſe: And the ſame Law of
Tenant for term of yeers, and Tenant
for life, their fealty is due; and where
a rent is reſerved, there, though a uſe
be expreſſed to the uſe of the Donor,
or Leſſor; yet this is a conſideration
that the Donee or Leſſee ſhall have it
to his own uſe: And the ſame Law
where

Of the Eſcheat, 14. H 8 8. by Pollard: of the Recovery, 4 E. 6. Com 54. by Halles. 1 R. 3. ca. 5.

See 29 H. 8. after. 14 H. 8. 8. by Br. Juſt. Perk. 103. C.

Litt. 29. Perk. 103. D. ſee after.

See Dyer 5. M. fo. 155.

where a man sells his Land for 20.l. by Indenture, and executes an Estate to his own use; this is a void limitation of the use: for the Law by the consideration of money, makes the Land to bee in the Vendee. *Et opinio fuit*, That a use was at Common-Law before the Stat: of *Quia emptores terrarum*, but uses were not common before the same Stat: For upon every Feofment before this Stat: there was a Tenure betwixt the Feoffors and the Feoffee; which was consideration, that the Feoffee shall be seized to his own use; but after this Stat: the Feoffee shall hold *de capitali domino*, and there is no consideration betwixt the Feoffor and the Feoffee without mony paid, or other especiall matter declared, for which the Feoffee shall be seized to his own use: For when the Stat: of *Marlebr:* is, that a Feofment by the father, Tenant in chivalry, made to his son by covin, shall not toll the Lords Ward, &c. In these Cases the Feoffor after such Feofment takes the profits of the Land all his life. And the same Law by *Shelley* of a Feofment made by a Woman to a Man to marry her, the Woman takes the

Westm. 3. ca. 2. Rast. Tenure 4.

45 E. 3. 15 by Finch.

Perk. 103. B.

Cap. 6. see before.

See Cook lib.

he profits after the eſponſalls: *Quere inde*; for this is an expreſſe conſideration in it ſelf. And by *Norwich*, If a man deliver money to *J: S:* to buy land for him, and he buyes it for himſelf, & to his own uſe; this is to the uſe of the buyer, and to the uſe of him who delivered the mony; and there is no other remedy but an action of deceipt. 14 *H:*8. *B: Feofments to uſes* 40. 20 H 6.34 by Wangf.

Note, if a Feofment be made to the uſe of *W N*, for term of his life, & after to the uſe of *J: S:* and his Heirs, their *ceſtuy que uſe* in remainer or reverſion, may ſell the remain or reverſion in the life of *W N*, but hee cannot make a Feoffment till after his death, 25 *H*: 8. *B*: *Froffments to uſes* 44. 10 El. Com. 350.

'Tis holden that if the Feoffees ſeiſed to the uſe of an Eſtate taile, or other uſe, are impleaded, and ſuffer the common recovery againſt them upon bargaine, this ſhall bind the Feoffees and their Heirs, and *ceſtuy que uſe* and his Heirs, where the buyer and recoveror hath not conuſance of the firſt uſe: And by *Fitz*: it ſhall binde, though they had notice of the uſe; for the Feoffees have the Feeſimple: *Et* See before Time. H. 8 & after 30 H. 8.

per

per plures, if *cestuy que use* in tail be vouched in a recovery, and so the recovery passes, it shall bind the tail in use *f: cestuy que use* and his Heirs and otherwise not; And this *B* seems to be by the Stat: which excepts tenant in taile, which is intended tenant in taile in possession, and not *cestuy que use* in taile, for *cestuy que use* in tail is not tenant in taile, 29 *H:* 8. *B. Recovery in value*, 20. *Feoffments to uses*, 56.

1 R. 3. ca. 5. Rast. Uses 4.

See before

Feoffees in use make a lease for yeers rendring rent, to another who hath notice of the first use, yet the Lease shall be only to the use of the Lessee himselfe: And the same Law *per plures* though no rent be reserved: And if a man makes a Feofment, and annexes a Schedule to the Deed conteyning the use, hee cannot change the use after; and so if hee expresses the use in the Deed of Feofment, but otherwise where hee declares the use by words of his Will *f:* I will that my Feoffees shall bee seized to such a use, there he may change this use, because by Will, &c. And that if a Feofment be made to the use of the Feoffor in tail, & after he execute an estate to him in

19 H. 8. 1. accord.

See 20 H. 7. 11.

fee, the uſe of the Eſtate taile is determined, 30 *H*: 8. *B* : *Feofments to uſes*, 47.

If *A:* Covenants with *B:* That when *A:* ſhall be Enfeoffed, by *B:* of three acres of Land in *D* : that then he ſaid *A* and his Heirs, and all others ſeized of the Land of the ſaid in *S:* ſhall be thereof ſeiſed to the uſe of the ſaid *B:* and his Heirs; there if *A:* makes a Feofment of his Land in *S:* and after *B:* Enfeofs *A:* of the ſaid three acres in *D:* there the Feoffees of *A:* ſhall bee ſeiſed to the uſe of *B:* notwithſtanding they had not notice of the uſe; for the Land is and was bound with the uſe aforeſaid, to whoſe hands ſoever it ſhall come; and 14 H. 8 9. by Pollard tis not like where a Feoffe in uſe ſells the Land to one who had not notice of the firſt uſe; for in this firſt Caſe the uſe had not being till the Feofment be made of the three acres; and then the uſe doth commence, 30 *H:* 8 *B: Feoffments to uſes* 50.

'Twas doubted if a Recovery had againſt *ceſtuy que uſe* in taile, ſhall binde the Heir in taile; But by *Hales* Juſt: By ſuch Recovery the entry of the Feoffees ſeiſed to the uſe of the Eſtate See 29 H. 8. before.

ſtate taile is taken away, but after the death of *ceſtuy que uſe* who ſuffered the Recovery; the Feoffees may have a writ of right, or writ of entry *ad terminum qui preteriit* in the *poſt*, or the like: And by ſome there is no uſe in taile, but 'tis a fee-ſimple conditional at common Law, as 'twas of the taile before the Stat: of *W:* 2. And this Stat: makes no mention but of gifts in taile, which is taile in poſſeſſion; and therefore *quære*, if the taile in uſe can not be taken by the equity of it, yet 'twas doubted if the iſſues and the Feoffees ſhall be bound after the death of *ceſtuy que uſe*, who ſuffered the Recovery, by reaſon of thoſe words in the Stat: of 1 *R:* 3. which will that the Recovery ſhall bee good againſt the Vendor and his Heirs, clayming only as Heir, and againſt all others clayming only to the uſe of the Vendor and his Heirs; and this is intended, by ſome, of a Fee ſimple: And in the caſe aforeſaid the iſſue in taile claymeth as Heir in taile in uſe. (*B: Feofments to uſes* 55, *the middle*)

19 H 8 13 ſee before. Weſtm. 2. ca. 1. 1 R. 3. ca. 5.

yet ſee the Stat: of 32 *H:* 8. That a Fine with Proclamation, levyed or to be levyed by tenant in taile in poſſeſſi-

32 H. 8. ca. 36.

on,

n, Reverſion, Remainer, or in Uſe, ter Proclamation had, ſhall binde hoſe tenants of thoſe tayles and their Heirs for ever: And ſee that the ſame tat: is as well for the time paſt, to come, 30 *H:* 8. *B. Feofments to uſes*, 57. See Tit. Fines.

If Covenants and Agreements are ontained in Indentures and not uſes; nd 'tis Covenanted by the Indentures hat *A:* ſhall recover againſt *B:* his and in *D:* to the uſe of the recoveror nd his Heirs, and to the uſes of the Covenants and Agreements in the Indentures; there if he recovers, the recovery ſhall be to the uſe of the recoveror and his Heirs; and not to the uſes of the Covenants and Agreements n the Indentures, where no uſes are n the Indentures. But otherwiſe, if uſes are conteined in the Indentures, nd 'tis Covenanted, That *A:* ſhall recover to the uſe of *A:* and his Heirs, nd to the uſes in the Indenture; there he recovery ſhall goe according, and hall be executed by the Stat: 32 *H:* 8. *B: Feoffments to uſes* 58. 27 H. 8. ca. 10. Raſt. Uſes 9.

'Twas agreed by all the Juſtices, upon great deliberation, in the caſe of *Mantel* Eſq: of the County of *North:*

who

who was attainted with the Lord *Dacres* of the South, for the death of a man (which ſee *Tit: Corone.*) that where he at his marriage 31 *H:* 8. after the Stat: of uſes made, 27 *H:* 8. Covenanted, That for a 100.l. and in conſideration of marriage, that hee and his Heirs, and all perſons ſeized of his Lands and Tenements in *H.* ſhall bee thereof ſeized to the uſe of his wife for term of her life, and after to the Heirs of his body by her ingendred, that this ſhall change the uſe well enough, and very good: And by this the Land was ſaved, and was not forforfeited, 34 *H:* 8. *B: Feoffments to uſes* 16. the end.

A man purchaſes Land, and cauſes an Eſtate to bee made to him and his wife, and to three others in Fee, this ſhall bee taken to the uſe of the husband only; and not to the uſe of the wife without ſpeciall matter to induce it. And ſo ſee a Woman may be ſeized to the uſe of her husband, and by him ſuch Feofment was, 3 *H:* 7. and intended as aforeſaid, 34 *H:* 8. *B: Feoffments to uſes* 51.

See 4 E. 6. Com. 44

A man makes a Feofment in Fee to his uſe for term of life; & that after his deceaſe

decease *I N* shall take the profits; this makes a use in *I N*, contrary if he saies, that after his death his Feoffees shall take the profits and deliver them to *I N*, this doth not make a use in *I N*: for he hath them not but by the hands of the Feoffees, 36 *H:* 8. *B: Feoffments to uses*, 52.

A man cannot sell Land to *I S*, to the use of the Vendor, nor let Land to him rendring rent, *habend:* to the use of the Lessor, for this is contrary to Law and Reason, for he hath recompence for it: And by *Hales*, a man cannot change a use by a covenant which is executed before, as to covenant to bee seised to the use of *W S*, because that *W S* is his Cosin; or because that *W S* before gave to him twenty pound, except the twenty pound was given to have the same Land. But otherwise of a consideration, present or future, for the same purpose, as for one hundred pounds paid for the the Land *tempore commentionis*, or to bee paid at a future day, or for to marry his daughter, or the like, 36 *H:* 8. *B: Feoffments to uses*, 54.

See 24 H. 8. before More held time M. 1. that a use may be well changed for a consid. past. See 1. 8 El. 309. cont.

See Mildmayes case Cook lib. 7. & 8 El. Com. 302.

Note, a Recovery was suffered

by *Graſeley* of the County of *Stafford*, by advice of *Fitz. Serjeant* and others, and he was only *ceſtuy que uſe* in tail, and after he died without iſſue, and his brother recovered the Land in the Chancery, for at this time 'twas taken that a Recovery againſt *ceſtuy que uſe* in taile, ſhould not ſerve but for term of his life, by which 'tis not but a grant of his eſtate, *Time H:* 8. *B: Feoffments to uſes* 48. *the end.*

See 30 H. 8. before.

By *Fitz.* Juſt: if the Feoffees to the uſe of an Eſtate taile, ſell the Land to him that hath notice of the firſt uſe, yet the buyer ſhall not be ſeiſed to the firſt uſe, but to his own uſe, by reaſon of the bargaine and ſale, for the Feoffees have the Fee ſimple, and therfore their ſale is good, *Time H:* 8. *B: Feoffments to uſes* 57. the middle.

See 29 H 8 & 5 E. 6. before.

Note, *per plures*, If a man makes a Feofment in Fee before the Stat: of uſes, or after this Stat: to the uſe of *W:* and his Heirs, till *A:* pay fourty pound to the ſaid *W*, and then to the uſe of the ſaid *A*, and his Heirs, and after comes the Stat: of uſes and executes the Eſtate in *W*, and after *A* paies to *W* the 40.l. there *A* is ſeiſed in Fee, if he enters; yet by ſome *A* ſhall

27 H 8 ca. 10. See Cook. lib 1. Chudleighs caſe

not be ſeized in Fee by the ſaid payment, except that the Feoffees enter: *B* doubts thereof, and therefore it ſeems to him beſt to enter in the name of the Feoffees, and in his name, and then the one way or the other the entry ſhall be good, and ſhall make *A* to bee ſeiſed in Fee; and alſo ſee by *B*, that a man at this day may make a Feoffment to a uſe, and that the uſe ſhall change from one to another by act *ex poſt facto*, by circumſtance, as well as it ſhould before the ſaid Statute, *6 E: 6. B: Feofments to uſes* 30.

'Twas holden *per plures* in the Chancery; if a Recovery bee had, in which *ceſtuy que uſe* in taile is vouched, and the demandant recovers, then this ſhall bind the iſſue, *Time E: 6. B: Feofments to uſes* 56. *the end.* See before

If a Covenant bee by Indenture, that the ſonne of *A* ſhall marry the daughter of *C*, for which *C* gives to *A* a hundred pound, and for this *A* covenants with *C*, That if the marriage takes not effect, that *A* and his Heirs ſhall bee ſeiſed of a hundred and fiftie acres in *D*, to the uſe of *C* and his Heirs, *quo uſque A* his Heirs or

Executors repaies the hundred pound, and after *C* hath iſſue within age and dies, and after the marriage takes not effect by which the State is executed in the Heir of *C*, by the Statute of uſes made 27 *H*: 8. notwithſtanding that *C* was dead before the refuſall of the marriage, for now the uſe and poſſeſſion veſts in the Heirs of *C*, for that the Indentures and Covenants ſhall have relation to the making of the Indentures, for theſe Indentures binde the Land with the uſe, which Indentures were in the life of *C* : But by *B*: *quære* if the Heir of *C* ſhall bee in Ward to the Lord, for hee is Heir, and yet a Purchaſor, as it ſeemes, 3 *M*: 1. *B*: *Feofments to uſes*, 59.

27 H 8 ca. 9 Raſt. uſes 9. See Cook lib. 1. Shellies caſe.

Gift of Land for yeeres, or of a Leaſe for yeeres to a uſe, is good; notwithſtanding the Statute; for the Statute is intended to avoide gifts of Chattells to uſes for to defraude Creditors only, and ſo is the preamble and intent of this Statute, 3 *M*: 1. *B*: *Feofments to uſes*, 60.

8 H 7 ca. 4 Raſt. uſes 6.

Fines,

Fines levies, Fines levied.

Note, That 'twas Covenanted that *A* ſhall make to *B* his wife, daughter of *I K*, a joynture by Fine, and the Writ was brought by *I K* againſt *A* and *B* his wife, and they offered to acknowledg to *I*, to the intent that *I* ſhould render to them, for life of *B*, and becauſe *B*, the wife, was within age, therefore ſhee was drawne out and rejected: And then becauſe that none can take the firſt eſtate by the Fine, but thoſe who ſhall be named in the Writ of Covenant (but every Stranger may take a remainder) therefore the Writ was made betweene *I* and *A*, only by which *A* acknowledged the Tenements to bee the right of *I*, *ut illa que*, *&c.* and *I* granted and rendred it to the ſaid *A* for terme of his life, without impeachment of Waſte, the remainder to the ſaid *B*, his wife, for terme of her life, the remainder to the ſaid *A* and his Heirs, 30 *H:* 8. *B: Fines, Levies*, 108.

H 38. H 8 accord betwen W. Roch. and Radm. Latharne, &c. See Tit Coverture.

Fine with proclamation to bind Tenant in tail and his iſſue, the time

for to make proclamation, &c. See *Tit: Assurances.*

If *cestuy que use* for term of life levies a Fine with Proclamation; there none need to enter nor make claim within the five years, because that 'tis but a Grant of his Estate, which is lawfull, and no forfeiture; for hee hath nothing in the Land; nor hee cannot make a forfeiture of the use. The same Law of a Fine levyed by Tenant for life in possession: Yet *B* doubts thereof and thinks otherwise if hee levy it in Fee (*B: Feoffments to uses* 48. *Fines levies* 107.) *Et per plures*, if it be levyed by *cestuy que use* in tail, it shall bind him and his Heirs; but not *cestuy que use* in the reversion nor the Feoffees after the death of the Conusor, for the Statute of 1 *R.* 3. is, That it shall bind him and his heirs and Feoffees clayming onely to the same, which is not so here, *Quære inde*; for *B* seems by the same Statute, that tayl in possession is remedied by this Statute; but not tayl in use: for this seems to him to remain at Common-Law, as a Fee-simple in use conditionall; for 'tis not a Gift of the Land; yet *quære*, for by him, by the equity of the

10 H 7. 20. by Keble.

27 H 8. 20 Fitz. accord.

1 R. 3. ca. 5. Rast. uses 4. See Tit. Feoffments to uses.

the Statute of *W.* 2. of tayles, deviſes in tayl are taken; yet this is in nature of a Gift; yet not at this day by the Statute of 32 *H:* 8. fine with Proclamation by *ceſtuy que uſe* in tayl, ſhall bind the tayl after Proclamation, 30 *H:* 8. *B: Fines levyed* 107. the end. W. 2. ca. 1. 32 H. 8. ca. 36.

Note, That a Deed inrolled in *London*, binds as a Fine at Common-Law (but not as a Fine with Proclamation;) and there need not ſivery of Seiſin upon ſuch Deed: And this is a diſcontinuance without ſivery, becauſe that by the cuſtome there (which is reſerved by divers Parliaments) it ſhall bind as a Fine, 31 *H:* 8. *B: Fines Levies* 110. See Tit. faits inroll

'Twas granted for Law, where two are of the ſame name (as if there bee two *R B*) and the one levies a Fine of the others Land; there the other ſhall avoid it by Plea, *ſ:* to ſay that there are two of the name; and that the other *R B* levied the Fine, and not this *R B*, 33 *H:* 8. *B: Fines levies* 115. the end. 34 H 6. 19 by Danby.

Note that if the Writ of *Dedimus poteſtatem*, to levie a Fine doth not beare *teſte* after the writ of Covenant,

'tis Error; for the *Dedimus potestatem* saies, *cum Breve nostrum de conventione pendet* betwixt *A B* and *C D*, &c. 35 *H.* 8. *B. Fines, Levies*, 116.

Note, that 'twas devised to have a Lease for yeeres to binde Tenant in taile, that the tenant in taile and the Lessee should acknowledge the tenements to bee the right of one *A*, a stranger, and that *A* should grant and render by the same Fine to the Lessee for sixtie yeeres, the remainder to the Lessor and his Heirs, and 'twas with Proclamation, which shall binde the taile after proclamation made (And so see that the Devise after will not serve for taile, but for Fee simple, for hee which takes by Fine, shall not bee concluded if hee bee an Infant, or *Feme covert*, or the issue in tail of the Conusor:) And in this case no rent can bee reserved; for *A* was a stranger to the Land, by which the Lessee granted ten pound of rent, and *extra terra: illa:* with a clause of distresse during the yeeres or terme aforesaid to the Lessor, 36 *H.* 8. *B. Fines, Levies*, 118.

See Time. H. 8 after.

See 36 H. 8. before.

Lease may be made by Fine for term of

of yeeres rendring rent, and suffer the lessee to acknowledg the tenements to be the right of the Lessor *come ceo, &c.* and then the other grant and render to him for terme of fiftie yeeres, rendring therefore yeerely ten pound *per annum, &c.* And with Clause of Distresse, *Time, H: 8. B: Fines, Levies*, 106.

Note, by *Fitz.* Just: That a Fine levyed by *A* and *B* his wife, where the name of the wife is *M*, shall binde her by estoppell, and the tenant may plead that shee by the name of *B.* levyed the Fine, and so 'twas in ure by him, and 'twas pleaded according, *Time H: 8. B: Fines, Levies*, 117. Fitz 97. A.

Note, by *Bromeley* chiefe Justice, and others, That a Writ of Error was brought in the Kings bench, because a Fine was acknowledged by *Dedimus potestatem*, before one who was not a Judge, Abbot, Knight nor Sargeant: and for this cause 'tis refused to admit any which is taken by such; for the Statute *de finibus & Attorn:* gives power to none except to Justices, Abbot and Knight; *quære*, by *B.*: if a Sarjeant at Law, bee not taken as

a

a Juſtice by the equitie of the Statute, *Time H: 8. B: Fines, Levies,* 120.

Twas granted that a Fine may be levyed in a Hamlet; for if a *Scire fac:* lyes upon a Fine in a Hamlet (as it appears 8 *E:* 4. that it doth) therefore a Fine is well levyed there, 6 *E:* 6. *B: Fines Levies* 93.

8 E. 4. 6. *per Cur.*

See 6 E. 6. before. Note, that 'twas agreed by the Juſtices, that a Fine may be well levyed in a Hamlet, and this, notwithſtanding all the houſes are decayed but one. The ſame of a Writ of Dower: And the ſame Law of that which hath been a Ville and no wis decaid; yet the name of the Ville remains, as old *Saliſbury*, which hath at this day Burgeſſes of Parliament, and the like, 7 *E:* 6. *B: Fines Leviet* 91.

8 E. 4. 6. *per Cur.*

Forcible Entry.

27 H. 6. 2. Hee which hath been ſeized peaceably by three yeeres, may retaine with force: But if a Diſſeizor hath continued poſſeſſion three yeers peaceably, and after the Diſſeiſee re-enters (as he may

22 H. 6. 18.

may lawfully) and after the Diſſeiſor re-enters, hee cannot deteine with force, becauſe that the firſt diſſeiſin is determined by the entry of the Diſſeiſee, and the Diſſeiſee by this remitted, and this Entry is a new Diſſeiſin: But if a man hath beene ſeiſed by good and juſt Title by three yeeres, and after is diſſeiſed by wrong, and after hee re-enters, hee may retaine with force; for he is remitted. and in by his firſt Title, by which hee firſt continued peaceably by three yeeres, *per quoſdam*: for it ſeemes to them, by the *Proviſo* in the end of the Statute, that this is good Lawe in the laſt Caſe, and ſtands well with the Statute; yet by ſome this is not Law, therefore *quære* 23 *H*: 8. *B*: *Forcible entry*, 22. 8 H. 6. ca. 9.

Forfeiture of Marriage.

'Twas ſaid, if a man brings a Writ of Intruſion *maritagio non ſatisfac:* for the ſingle value, and makes mention in the Writ of tender of marriage to the Heir, and that hee refuſed, &c. that the tender is not traverſable, Fitz. 141. D.

Time

Time H: 8. B: Forfeiture of Marriage 7. Intrusion 23. in finibus.

Forfeiture de Terre, &c. Forfeiture of Land, &c.

What shall be a forfeiture of the Estate of Tenant for life, what not, See *Tit: Entry Congeable.*

Richard Fermor of *L:* was attainted in *Premunire*, and his Lands forfeited in Fee *in perpetuum*, and not only for term of life; And so see 'tis not only a forfeiture for life, as in an attaint; for the one is by Statute, the other by the Common-Law, 34 *H:* 8. *B: Præmunire* 19. the end, *Forfeiture* 101.

4 H. 7. 11. by Townes. Note, If a man bee attainted of Treason by Parliament; by this his Lands and goods are forfeited, without words of forfeiture of Lands or Goods in the Act, 35 *H:* 8. *B: Forfeiture* 99.

Foundership cannot Escheate, nor be forfeited by attaindor of Felony or Treason, See *Tit: Escheate.*

Note, by *Hales* Justice cleerly, that

Cleark convict, shall lose his goods, *E: 6. B: Forfeiture* 113. St. 185. 20 E. 4. 5. by Billing 40 E. 3. 42.

Formedon.

'Tis said that if the issue in taile bee barred by Judgement, by reason of warranty and assets discended, and after hee aliens the asets, and hath issue and dies, the issue of the issue shall not have a *Formedon* of the first Land tayled; but if such thing happens before hee bee barred by Judgement, the issue of the issue shall have a *Formedon, Time H: 8. B. Formedon* 18. See 24 H. 8. Tit. Tayl.

Note, If the Feoffees are infeoffed to the use of the Feoffor, for terme of life, and after to the use of *A* in taile, before the Statute of 27 *H:* 8. of uses, and after the Estates, in uses are vested in possession by the same Statute, and after the tenant for life dies, and the tenant in tayle enters, and discontinues and dies, and the issue brings a *Formedon*, upon this matter hee shall suppose the Feoffor to be Donor, and not the Feoffees, and the Writ shall bee generall *quod dedit, &c.* but the Declarati- This matter was in ure P. Rot. 505. in the Common Bench betwixt Jarveis Demandant & Brown Tenant. See 7 E. 6. after. See 1 M. 1. after, & 7 E. 6.

Declaration ſhall bee ſpeciall and de
clare the whole matter, That the Feoſ
for was ſeiſed in fee, and enfeoffed th
Feoffees to uſes *ut ſupra*, and ſhew
the Execution of the Eſtates by th
Statute of uſes made 27 *H:* 8. brieſl
and not at large, and the ſeiſin &c
and the death of tenant for life and te
nant in taile *& quod poſt mortem, &c
diſcend: jus, &c.* 2 *E:* 6. *B: Formedon*, 49.

Formedon upon a gift in Fee to th
uſe of the Feoffor and the Heirs of h
body, which is executed by the Sta
tute of uſes 27 *H:* 8. and after th
Feoffor aliens and dies, his iſſue ſha
have a *Formedon* that the Feoffees d
derunt tenement: predict: to the fa
ther of the Demandant, *& diſcend
jus, &c.* for it cannot bee ſuppoſe
that the Feoffor gave to *ceſtuy que u*
which was himſelfe; for a man can
not give to himſelfe: and hee ſha
make a ſpeciall Declaration upon th
Feoffment to the uſe of the taile: Bu
where *A* makes a Feoffment in Fee, t
three, to the uſe of a Stranger and th
Heirs of his body, which is exempte
by the Statute aforeſaid, and afte
who was *ceſtuy que uſe* aliens in fe
an

4 E. 6. Com. 59. by Montague.

See 2 E. 6. before.

and dyes; there his iſſue ſhall have a *Formedon*, and ſhall ſay that the Feoffor gave to his father, and not the Feoffees gave, and ſhall make a ſpeciall Declaration, 7 *E: 6. B. Formedon* 46. *Generall Briefe* 14.

Note by *Bromeley* chief Juſtice, That the Demandant (in the caſe 2 *E: 6.* before) may declare generally if he will; and if the Tenant pleads *ne donat pas*, the Demandant may reply and ſhew the ſpeciall matter, as appears there, and conclude, & ſo he gave, &c. and good, 1 *M: 1. B: Formedon* 49. the end.

Forme.

Note, that Wood was put before Paſture in a Plaint of Aſſize, and exception thereof taken, and yet good, though it be contrary to the Regiſter, *Time: E: 6. B: Faux Latin & Forme* 66. 3 M. 1. Com. 169. See Cook. lib.

Frank.

Franke-marriage.

7 E. 4. 12. cont. by Moile and Fitz. 172. H. Litt. 4. accord. Perk. 48. E.

Note, that 'twas said for Law, that Land cannot bee given in Frank-marriage with a man who is Cosin to the Donor; but it ought to be with a woman who is Cosin to the Donor. *Time: H:* 8. *B. Frank-marrige* 10.

See 4 E 6. Com. 14. by Harris. Fitz. 136. B. of the acquittall. See Cook upon Litt.

Note, 'tis said for Law, that a Gift in Frank-marriage, the remainder to *J N* in Fee, is not Frank-marriage; for warranty and acquittall is incident to Frank-marriage, by reason of the Reversion in the Donor, which cannot be where the Donor puts the remainder and Fee to a Stranger upon the same Gift, *Time. H:* 8. *B: Frank-marriage* 11.

Garde,

Garde, Warde.

IF the Kings Tenant, Alien in Fee, without licence, and dyes, his Heire within age, the King ſhall not have the Ward, becauſe that nothing is diſcended to him; and that the alienation is good, ſave the Treſpaſs to the King, which is but a Fine by Seiſure: 26 *H.* 8. B: *Alienations* 29. *Garde* 85. *See Tit. Intruſion.*

If the King hath an heir in Ward, which is a Woman, and marries her before the age of Fourteen years; there ſhe ſhall be out of Ward at Fourteen years, and then may ſue Livery, for the Two years to make Sixteen years are not given, but to tender to her marriage, therefore when ſhee is married

ſooner, ſhee ſhall be out of cuſtody at Fourteen years, 28. *H.* 8. *B. Garde* 86. *Livery* 54.

27. H. 8. c. 10. See Dyer H. 8. Bocking. hams. c.

A man makes a Feoffment before the Statute of execution of Uſes, to the uſe of himſelf for term of his life, the remainder to W. in Taile, the Remainder to the right Heires of the Feoffor, the Feoffor dyes, and W. dyes without iſſue, the right Heir of the Feoffor within Age, he ſhall be in Ward for the Fee diſcended; for the uſe of the Fee-ſimple, was never out of the Feoffor. And the ſame Law where a man gives in Taile, the Remainder to the right Heires of the Donor, the Fee is not out of him. Otherwiſe, where a man makes a Feoffment in Fee upon condition to re-infeoffe him, and the Feoffee gives to the Feoffor for life, the Remainder over in Taile, the Remainder to the right

right Heirs of the Feoffor, for there the Fee, and the uſe of it was out of the Feoffor; & therefore he hath there a remainder and not a reverſion, 32. *H.* 8. *B. Garde* 93.

Where a man holds certain land of the King in Soccage in *Capite*, the King ſhall not have livery of more then the Soccage land. The ſame where he holds of the King in Knights ſervice, and not in *Capite*, the King ſhall not have more in ward, but onely that which is holden of him immediately, 32. *H.* 8. B. *Garde* 97. Fitz. 258 *c.* See 38. H. 8. Tit. Livery Stp. 10. 13

Note by all the Juſtices of *England*, that a Lord in Knights ſervice, by non-age of the Heir, ſhall not ouſte the grantee of *Wreck*, or *de proxima preſentatione*; nor the termors which are in by the father of the Heirs B, *Grants.* 85. *Garde* 66. Leaſe 31. in *finibus*: So of a Leaſe for term of life. 35. *H.* 8. B. *Garde* 61. the end. 5. H. 7 37 See 36. H 8. Tit. Leaſes. See Time H. 8. after 5. H. 7. 37. by all.

A man dyes ſeiſed of lands holden in Knights ſervice, his brother and Heir within age, the Lords ſeiſes the ward, the wife of the Tenant privily with childe with a ſon, and after the wife is delivered, the brother is out of ward. But if the Infant dye, the bro-

ther yet within age, there the brother ſhall be in ward again. And the ſame Law where a daughter is heire, and after a ſon is born, the daughter is out of ward: And if the ſon dies without iſſue, the daughter within age, ſhe ſhall be in ward again; ſo ſee that one and the ſame perſon may be twice in ward by two ſeveral anceſtors. But where the Lord ſeiſes the ſon for ward for land to him deſcended from his Father, and grants the marriage of him to another, and after other land holden in Knights ſervice, holden of the ſame Lord deſcends to the ſame ſon from his mother, there B. ſeems that the Lord ſhall not have the ward again, becauſe he had him, and granted his marriage before, and the body is an intire thing. 35. *H.* 8. *B. Garde* 119.

'Tis granted by all the Juſtices that

that the King ſhal not ouſte the termor of his tenant, becauſe he hath the heir of his tenant in ward by office found for him; nor execution upon a Statute Merchant made againſt his tenant; nor a rent charge granted by his tenant, nor a grant *de prox. preſentatione* of an Advouſon. *Time* H. 8. B. *Garde* 44.

See 35. H. 8. before. 11. H. 6, 7. by Babing.

If the ſon and heire of the Kings tenant, or of another Lord be made a Knight in the life of his Father, and after the Father dies, the heir ſhall be in ward; for otherwiſe the Anceſtor may procure his ſon within age to be made a Knight by colluſion, to the intent to defraud the Lord of Ward, which ſhal not be ſuffered. And ſo it fell out of the Lord *Anth. Brown* of *Surrey*, who was made Knight in the time of his Father, who died, the ſon within age, and twas holden he ſhould be in ward, notwithſtanding he was a Knight; wherefore he agreed with the King for his marriage: Otherwiſe B. ſeemes where hee is in ward, and is made Knight in ward, this ſhall put him out of ward, and by him the Stat. which is,

See 15. E 4. 10. 6. El. Com. 268. cõtra. And ſee *Cokes* Books.

6. El. Co. n. 268. Magna Cart. ca. 3. Raſt. ca. 1.

Poſtquam hæres fuerit in cuſtodiam cum ad ætatem pervenerit S. 21, *annorum, habeat hereditat. ſuam ſine relevio, & ſine Fine: Ita tamen quod ſi ipſe, dum infra ætatem fuerit, fiat miles, nihilominus terra ſua remaneat in cuſtodia dominorum uſque ad terminum ſupradict.* is intended where he is made Knight within age being in ward after the death of the Anceſtor, and not where he is made Knight in the life of the Anceſtor. 2. E. 6. B. *Garde* 42. & 72.

'Twas agreed for Law in the Common Bench, that if the Lord hath not been ſeized of homage within time of memory; but hath been ſeiſed of rent, it ſuffices to have a Writ of Ward, and to count that he died in his homage; for there is ſeiſin of ſomething, though it bee not of the intire ſervices: And for this cauſe, and alſo for that the ſeizin is not traverſable, but

See *Cokes* Books, & 7. E. 6. after.

but the Tenure; therefore the action lies without Seisin of the Homage, 6. E. 6. B. *Garde* 122. the end.

Twas holden by the Justices of both benches, That where a man holds by Rent and Knights Service, and the Lord and his ancestors have been alwaies seised of the Rent, but not of the homage, escuage, nor of Ward: yet if a Ward fall, he shall have the ward of the heir, for the seisin of the Rent suffices to be seised of the Tenure, as to this purpose. Yet otherwise B. seems to make avowry, 7. E. 6. B. *Avowry* 96. the end. *Garde* 69. See 6 E. 6. before. See Coks Books.

Where a use vests in the heir, as heir of his Father, where the Father was dead before? Whether the heir shall be in ward, or not: Quære, See Tit. *Feoffments to uses.* 3. *M.* 1.

Note that twas declared by the Doctors of the Civil Law, That where an heir or other is married *infra annos nubiles*, and after disassents at the age of discretion, or after, before assent to the Marriage, that this suffices: and the party may marry to another without divorce, or witnessing of it before the Ordinary: but the Ordinary may pu-

niſh it *per arbitrium judicis*; but the ſecond eſpouſals is good, as wel by the Law of the Kingdom, as by the Law of the Church, 5. *M.* 1. *B. Garde* 124.

Frowike Le&. upon the ſtat. de Prærogativa Reg. 55. 33 H. 6. Ward and marriage is by the Common Law: and the Father ſhall have the Ward of his ſon or daughter, and heir apparent, before the King or other Lord; and Soccage Tenure by 20 years, and Knight ſervice after, B. *Garde* 120. the end.

If an eſtate be made to many and the heirs of one of them, and he which hath the Fee dies, his heir within age, he ſhall be in Ward by the Statute of Wills, notwithſtanding the others ſurvive which are Tenants by the Common Law, *Caſus B. Garde.* 100.

32 H. 8. ca. 1 Raſt Wills 1.

Gar-

If the husband & wife alien land of which ſhe is dowable, there to have collateral warranty, tis good to have the Warranty of the Wife againſt her and her heirs; and then if ſhe hath iſſue by the husband, and ſhe and the husband die, the Warranty ſhall be collateral to the iſſues, becauſe that the land came by the Father, and not by the Mother, 31. H.8.B. *Garranties* 79.

Note if the husband diſcontinues the right of his wife, and an anceſtor collaterall of the wife releaſes with Warranty and dies, to whom the Wife is heir, and after the husband dies, the wife ſhall be barred in a *Cui in vita* by this Warranty, notwithſtanding the Coverture; becauſe that ſhe is put to her action by the dif-

diſcontinuance; for Coverture cannot avoid Warranty, but where the entry of the wife is lawful, which is not upon diſcontinuance. 33. H.8.B. *Garranties* 84.

If a man ſaies in his Warranty, *Et ego tenementa predict. cum pertinent. prefato* A. B. the Donee *Warrantizabo*, aud doth not ſay, *ego & heredes mei*, he himſelfe ſhall warrant it, but his heir is not bound to warrant it; becauſe that (heirs) are not expreſſed in the Warranty, 35.H.8.B. *Garranties* 50.

See Coke upon Lit

Sir *Robert Brudnel*, late Chief Juſtice of the Common Bench, deviſed a Warranty now in uſe, *viz.* That the warrantor for him and his heirs *Warrantizabit contra ipſum & heredes ſuos*, and by this the Feoffee ſhall rebut, but not vouch, *Caſus B. Garranties* 30. the end.

where

General Writ.

Where upon a *Formedon* upon uſe, there ſhall be a General Writ, and ſpecial Declaration? ee Tit. F*ormedon.*

General iſſue.

In an Aſſiſe or Treſpaſs, if a an entitles a ſtranger, and ju-ifies by his Commandment, his ought to be pleaded; and ot given in evidence up-n *Nul tort.* or not guilty plead-d.

So of Common Rent Service, Rent Charge, Licence, and he like, theſe ought to be pleaded and not given in evi-dence upon a general iſſue. Con-trary of a Leaſe of Land for years upon not guilty pleaded, the Defendant may give it in e-vidence

Of the *Licence* 4 E. 6. com. 14. by Harris

vidence; (B. *General issue* 81.) otherwise of a Lease at will; for this is as a Licence, which may be Countermanded, or determined at pleasure.

12 H 8. 1 by Brook

And if a Villen plead Free, and of Free Estate he may give manumission in evidence; for this is Manumission indeed.

But where he is Manumitted by act in Law, as a suit taken against him by his Lord; or an Obligation made to him by his Lord, or a Lease for years, and the like, which are manumissions in Law, of which the Jury cannot discuss, and there-

Lit. 45. See the Act of this present Parliament which inables to plead the general issue & to give the special matter in evidence

herefore these shall be plea-
ed, 25 H.8.B. *General issue*
2.

Debt upon an escape in the
Exchequer against the She-
iffs of *London*, for leting a
man arrested by them by *ca-
pias ad satisfaciendam*, and
n Execution to escape: the
Defendandts cannot say
hat he did not escape, and
give in evidence that he was
not arrested for the arrest is
confessed, if he saies that he
did not escape, 34. H. 8. B.
General issue 89.

M.5.E.6 accord. Sec34H. 8.after. *Nota per plures Juſt. & alios legis peritos*, That where a man grants an office of Bayliff, Steward, Receiver, Parker, and the like; and a Fee certain for his labour onely, there the Grantor may expulſe ſuch Officers.

But they ſhall have their Fee, for tis but an Office of Charge.

But

But where the Steward,& Parker have profits of Courts, Winde-Falls, Dearkinnes, and the like casuall profits, tis said that they cannot be expulsed, and that of such Offices they may have an Assise.

And tis said that twas so taken in the time of *James Hobert* Attorney of King *HENRY* the 7. And the Officers may relinquish their Offices when they will, but then their *Fee* ceases.

And

And *Whorewood* Attorney of King *HENRY* the 8. granted the Cases aforesaid, 31. H. 8. B. *Grants*, 134.

Twas said for Law, That I may Ouste my Bayliff, Receiver, and the like, giving to them their Fee; for it rests in Charge, and no profit.

See 31 H. 8. before.

B. doubts of the Steward, for an Assise lies of such Ousters, 34. H. 8. B. *Grants* 93. the end.

What

What ſhall paſs by a Grant of *omnia bona ſua.* See Tit. *Done.*

A man poſſeſſed of a Leaſe for term of fourty yeers, grants ſo many of them to *J.N.* which ſhall be arrear *tempore mortis ſuæ*, and held void by *Hales* Juſt. and others, for the incertainty, becauſe it doth not appear how many ſhall be behinde at the time of his death: for the Granter may live all the 40 yeers, and then nothing ſhall be arrear at his death, *quære.* (*B. Grants* 154. *Leaſes* 66.) but ſuch Deviſe by Teſtament is good, (*B. Grants* 154.) And 'tis not like where a man leaſes Land for term of life, and four yeers over: this is certain, that his Executors ſhall have four yeers after his death. (*B. Leaſes* 66.) And alſo, if a man leaſes his Land to have from his death for four yeers, 'tis good: for this is certain; and he hath authority to charge his own Land. 7 *E.* 6. *B. Grants* 155.

See Coke Litt. and the Rector of Chedingtons caſe.

Accord. Finch 46. E. 3. 31. 11 H. 4. 34 by Hank.

A man grants *omnia terras & tenementa ſua* in *D.* a Leaſe for yeers ſhall not paſs. Contrary, if he grants *omnes firmas ſuas*, there by this a Leaſe ſhall paſs: for of this an *ejectione Firme* lies, and by this he ſhall recover the Term; and therefore 'tis a good word of Grant. 7 *E.* 6. *B. Grants* 155.

See 37 H. 8 Tit. Done.

Hariots.

D.S. 76. 8 H.7. 10. 7 E.6. Com. 96.

Is ſaid that for Hariot-cuſtom a man ſhall alway ſeiſe; and if it be eſloigned, he may have detinue. And for Hariot-ſervice eſloigned, he may diſtrain but not for Hariot-cuſtom. *Time. H. 8. B. Hariots. 6. the end.*

Hereſie.

Note, that 'twas agreed by all the Juſtices, and by *Bake*, learned in the Law and Chancellor of the Exchequer; and 2H.4.c.15 by *Hare*, learned in the Law, and Maſter Raſt. Hereſie, 1. of the Rolls, That by the Statute of Hereticks and Lollards, that if a Heretick be convicted in preſence of the Sheriff, the Ordinary may commit him to the ſame Sheriff; and he ought to burn him without having a Writ *de hæretico comburendo.* But if the Sheriff be abſent, or if the Heretick ſhall be burnt in another County in which he is not convicted, then in theſe caſes the Writ *de hæret. comburend.* ſhall be awarded to that Sheriff or

Officer who ſhall make execution. And
e ſaid Statute in the end wills, *that the*
heriff ſhall be preſent at the convicti-
, if the Biſhop requires him. And
erefore the uſe is that the Ordinary ſhall
l the Sheriff to be preſent at the con-
tion. And ſo in the Writ *de hæret.*
mburend. in the *Nat. Brin.* that the F. N. B.
chbiſhop and his Province in their Con- 269.
ation might and uſed to convict Here-
s by the Common Law, and to put
m to lay hands: And then the Sheriffs
Writ *de hæret. comburend.* burnt them.
t becauſe that this was troubleſome, to
l the Convocation of all the Province,
as ordained by the Statute aforeſaid,
a every Biſhop in his Dioceſs may
vict a heretick, and after abjura-
upon relapſe, put him to lay hands
e burnt. And *B.* ſeems that if the
retick will not abjure at the firſt Con-
tion, that he may be burnt at the firſt
viction without abjuration. Other-
e, if he will abjure: for then he ſhall
be burnt the firſt time, but upon re-
e he ſhall be burnt. 2. *M.* 1. *B.*
reſie.

Homagé. See Tit. *Fealty.*

Ideot.

Brent of the County of *Somerset*, who was presented for an Ideot, could write Letters and Acquittances, and the like; and therefore was adjudged an Unthrift, but no Ideot. *Time. E. Ideot* 4. *the end.*

Impriſonment.

'Twas determined in Parliament, that Impriſonment almoſt in all caſes is but to retain the offender till he hath made his Fine; and therefore if he offers his Fine he ought to be delivered preſently; and the King cannot retain him in priſon after the Fine tendered. 2 *M.* 1. *B. Impriſonment* 100 *the end.*

See 33 H. 8 Tit. Manor. DS. 118 H. 7. 5. by Vaviſour. 12 H. 7. 16. by Yaxley. & 17. by Tremaile. 12 E. 4. 9. by Genny. 22 E. 4. 33. by Suliard. Ske Cokes books.

Incident.

Court-Baron is incident to a Manor and Court of Pipowders to a Fayr; but 'twas *ſed arguendo*, that therefore the Lord of the Mannor or Fayr cannot grant over the Court-Baron, nor the Court of Pipowders: or if they grant the Mannor

r with the Fayr, they cannot reserve
ch Courts, for they are incident, *&c.*
9 *H.*8. *B. Incidents* 34.

'Twas said, that if a Seigniory rests in omage, Fealty, and Rent, and a man covers the Rent; by this is the Homage covered: for a *Precipe* lies not of it. *ime. H.* 8. *B. Incidents* 24. *the* d. — 39 H.6.25 by Moile, & 44 E. 3. 19. p. Cur. & Perk. 24 cont. See Cokes books.

Indictments.

An Indictment of Death ought to comhend the day of the stroke, and day of death; and the same Law of Poyning; so that it may be known if he ed of the same stroke or not. 24 *H.* 8. *Indictments* 41. — St. 21. D.

By *Fitz.* Just. a Justice of Record may indicted of taking of money, and other ch falsity, but not of that which goes in lsifying or defeating of the Record, as say that he altered the Record from respass into Felony, and the like, which lsifies the Record. *Casus B. Indictent* 50. *the end.* — Fitz. 243.

See Tit. Garde, & 33 H. 8. after 8 E. 4 4 by Choke Srp. 84. See Tit. Leaſes.

Tenant in Tayl of Lands holden of t King, aliens without licenſe, which found by Office, the King ſhall have t Iſſues of the Land *à tempore inquiſiti nis capt.* and not before. (*B. Aliena ons, 26. in medio.*) But where the nant dies, and his heir enters, upon Of found for the King of the dying ſeiſed the anceſtor; there the heir ſhall anſw the profits taken by him before. *26 H. B. Intruſion, 18. the end.*

M. 4 M. 1. accord in caſu Mainwaring. See Tit. Leaſes.

Note, where 'tis found by Office t *I.N.* tenant of the King was ſeized, a died ſeized, and that *W.* his heir intrud and after by Act of Parliament the K pardons all Intruſions; in this caſe the try and the offence is pardoned, but not iſſues and profits: for the eſcheator ſh be charged of this by way of accou whether he hath received them or not: when the office is of Record, he ought receive them, except where 'tis found the Office that ſuch a man took the pro thereof. But where the King pardo where no Office is found, the heir is charged as well of the iſſues and pro and alſo of Livery, as of Intruſion, by ſon of the pardon: for by this all is p don

See 30 H. 8 Tit. Charters de Pardon.

doned. And there though the Office comes after which findes the intrusion of the heir, yet all is gone by the Pardon; and this shall serve, because all was pardoned before, to which the King was intitled of Record, 33 *H.*8.*B. Charters de pardon*, 71. *Intrusion* 21. *Issues returns* 22.

Office shall have relation to the death of the ancestor, as to Land descended to the heir of the Kings tenant. and as to intrusion. (*B. Relation* 18. *the end.*) Otherwise, as to alienation made by the Kings tenant without License: this shall not relate before the finding of it. (*B. Relation* 18. *Intrusion* 19.) And such entry by purchase is not called Intrusion, but a Trespass; and so are the words of the pardon thereof, *quod pardonamus transgression' prædict. &c.* 33 *H.*8.*B. Intrusion* 19. See 26 H. 8. before. See Tit. Leases.

Joyntenants.

If a Lease be made to three of Land at Common Law, for term of life, or for years *habendum successivè*, yet this is a joynt estate, and they shall hold in Joynture, and *successivè* is void: But where the custom of Copie-holds is, that this word *successive* shall hold place, this is good there by the custom. 30 *H.* 8. *B.* See Coke upon Litt. & Baldw. case, lib. 3.

Joyntenants 53. *Leases* 54.

41 E. 3. 18. by Finch. If a man infeoffs two, upon condition that they shall infeoff *W. N.* before *Michael'* and the one dies, the other sole makes the Feoffment; this is good. The same Law if two lease Land rendring rent, and that if it be arrear by two months, and lawfully demanded by the said Lessors, that they may re-enter, the one dies, and the other that survives demands it, and 'tis not paid, he may re-enter. And the same Law if the Lease were made to two, with words that if it be arrear, and demanded of them two, *&c.* and the one dies, and the Lessor demanded it of the other that survived, and he doth not pay, this is a good demand, and the Lessor may re-enter. 33 H. 8. *B. Joyntenants* 62.

Journeys accounts.

Grantee of a next presentation brings a *Q. impedit*, and dies after the six months past, and his Executors bring another *Q. impedit* by Journeys accounts, and by the Justices it will not lie. See Tit. *Q. impedit.*

Judge-

A man recovers by default againſt an fant, and the Infant brings a Writ of rour, and reverſes it for his non-age. herwiſe, if he had appeared, and loſt plea, or by voucher, he ſhall not re-ſe it for non-age. *B.* 6 H. 8. *Saver de fault* 50.

2 M. 1. accord B. Judgment 147. the end.

If I have Title by Formedon, or *cui vita*, and enter, and the other recovers ainſt me, I am remitted to my firſt acti-: But if a man recovers againſt me by ſe Title, by Action tried, where I was by good Title, I ſhall then have Error, Attaint, or a Writ of Right. 23 H. 8. *Judgement* 111.

See after Tit. Reſtore al primer action.

Aſſiſe in Com. B. the tenant pleads in ar a recovery by Aſſiſe by him againſt e Plaintiff of the ſame Tenements in om. O. and this now Plaintiff then nant pleaded in Bar by releaſe of the nceſtor of the Plaintiff with Warran-, which was void by non-age: and is found for the Plaintiff, by which he covered againſt this Plaintiff judge-ent *ſi*, where he accepts the Land to be

in

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in the County of *O.* now he ſhall be r
ceived to ſay, that it lies in the County
B. And 'twas ſaid in the Common Benc
that though this Land were then put
view, the Plaintiff ſhall not be bound
the recovery: for it cannot be intende
one and the ſame Land. 25 *H.* 8.

Judgement 62.

Aſſize of Land in *N.* the Defenda
ſaid that once before he brought an aſſi
of the ſame Land in *H.* againſt the ſa
Plaintiff, and theſe Lands put in vie
and this now Plaintiff then took the
nancie, and pleaded in Bar, and ſaid th
H. and *N.* are one and the ſame Ville, a
known by the one name and the othe
and that *A.* brought a Formedon of the
tenements, and pleaded certain, *&c.* a
recovered by Action tried, and the eſta
of the Plaintiff mean betwixt the title
and his recovery, judgeme
ſ of ſuch an eſtate aſſize, *&c.* to wh
the other ſaid, that every of the ſaid
and *N.* were Villes by themſelves, and
at iſſue: and 'twas found that they we
ſeveral Villes, and the ſeiſin and diſſeiſi
by which 'twas awarded that this ten
then Plaintiff ſhould recover. And b
cauſe that he hath recovered theſe ſa
Lands againſt the Plaintiff himſelf in
judg

udgement *ſi aſſiſe*. And *Sheily* Juſt. held ſtrongly, that this recovery of Land in *H.* is no plea in an aſſiſe of Land in *N.* and therefore the aſſiſe ought to be awarded: and ſo it ſeems to *B.* 25 *H.*8. *B. Judgement* 66. 44 E. 3, 45. cont. 23. Aſs' 16. 177.

If *A.* infeoffs *B.* upon condition, *&c.* to re-enter, there if a man impleads *B.* who vouches *A.* and ſo recovers; or if *A.* re-enters upon *B.* without cauſe, and is impleaded and loſes; there in the one caſe, and the other, the condition is determined: for the Land is recovered againſt him who made the condition. 26 *H.*8. *B. Judgement* 136.

Note, by *Bromley* chief Juſt. that a Judgement, where there is no original, is void, (as in an aſſiſe the Plaintiff appears, and after makes a *retraxit*; and after the Juſtices of Aſſize record an agreement betwixt them, in nature of a Fine: this is void, and *coram non Judice*, and ſhall not be executed, by reaſon that no Original was pending, but was determined before by the *retraxit*.) For without Original they have not Commiſſion to hold Plea; and then they are not Judges of this cauſe. 2 *M.* 1. *B. Judgement.* 114. Tr. 13. El. Com. 394 cont.

Iſſues

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Issues joyns, Issues joyned.

Trespas upon the case, *quod def. assumpsit deliberat. quer.* 4 *pannos laneos*, and he pleads, *quod assumpsit liberare* 4 *pannos lineos*, without that *qd. assumpsit modo & forma*, and so at issue. And 'tis found that he assumed to deliver 2 *pannos laneos*, *sed non* 4 (so see that this issue, though that it comes in a traverse, doth not amount but to the general issue) the Pl. recovered dammages, for the 2, and was barred and amercied for the rest. But otherwise 'tis if the issue be; If *A.* and *B.* infeoffed the tenant in a *Precipe quod reddat*, *necne*, and 'tis found that *A.* infeoffed him, but that *A.* and *B.* did not infeoff him, this is found against the tenant *in toto*, or against him who pleads such Feoffment, which is so found, 32. *H.* 8. *B. Issues joyns.* 80. *Verdict* 90.

See 2. M. 1. after.

10. E. 4. 2. by Litt.

Informed in the *Excheq.* against *A.B.* for buying Wools betwixt shearing time and the Assumption, such a year of *C.D. contra formaStatuti*, where 'tis not cloth, nor he did not make thereof cloth nor yarn; He sees that he did not buy of *C. D. contra formam Statut. propt. &c.*

24 H. 8. cap.

And

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And no iſſue, for 'tis not material nor traverſable whether he bought of *C. D.* or of *E. F.* or of another, but whether he bought them *contra formam Statut. nuper.* And therefore the Iſſue ſhall be that he did not buy *modo & forma, &c.* 33. *H.* 8. *B. Iſſues joyns.* 81. *Negativa pregnans.* 54. *Travers, per* 367.

In waſte iſſue was taken if the defendant cut twenty Oaks, there if the Jury finde ten and not the reſt, the Plaintiff ſhall recover for the ten, and ſhall be amercied for the reſt. 2 *M.* 1. *B. Iſſues joyns* 80. the middle. See 32. H. 8. before.

Iſſues returns; Iſſues returned.
See Tit. Intruſion.

Juriſdiction.

If the Lord of a Mannor claim the Tythes of ſuch Lands in *D.* to finde a Chaplain in *D.* and the Parochians claim them alſo for the ſame purpoſe, 'tis ſaid for Law, that the Lay Court ſhall have juriſdiction betwixt them, and not the Spiritual Court. 25 *H.* 8. *B. Juriſdiction* 95.

'Twas ſaid where a man pleads a plea in *Banco*

Thorp accords, 41 E. 3. 4.

Banco ultra mare, it ſhall be condemned at this day, becauſe that it cannot be tried in *England*. 36 *H.* 8. *B. Juriſdiction* 29.

Jurors.

Trial of a Peer of the Realm arraigned upon an Indictment, and appeal diverſity. See Tit. *Trial*, and Tit. *Enqueſt*.

Where Jurors may take conuſance and notice of a thing in another County. See Tit. *Attaint*.

M. 11. H. 4. 18.

Jury took a Scroll of the Plaintiff, which was not delivered to them in Court, and paſſed for the Plaintiff: and becauſe that this matter appeared to the Court by examination, therefore the Plaintiff ſhall not have Judgement. 3 *M.* 1. *B. Jurors* 8.

Leet.

NOte, for Law, if a pain be put upon a man in a Leet for to redreſs a Nuſance by a day *ſub pœna* 10 *l.* and after 'tis preſented that he did it not, and ſhall forfeit the pain;

ain; this is a good presentment, and the ain shall not be otherwise affeered. And he Lord shall have an Action of Debt learly; but he cannot distrain, and make avowry, except by prescription of usage o distrain and make avowry. 23 *H.* 8. *B. Leet* 37. 10 H. 7. 4. by Keble, Vavisour accord. 13. H. 7. 19. See Coke, Beechers Case.

Note, where the Statute of *Magna Charta cap.* 25. saith, *Et visus de Franci-plegio tunc fiat ad illum Terminum, qui. Michaelis, sine occasione*; this is ntended the Leet of the Tourne of the heriff, and not other Leets. 25 *H.* 8. *B. ast* 23 *the end.* Magna Chart. c. 15.

Leases.

By *Fitz-James* ch. Just. *Englefield* ust. and many others, if tenant for life ases Land for yeers, rendring rent, and es, the Lease is void, and then the rent is ermined. The same Law of a Parson. nd though the successor receives the rent, e Lease is not good against him: for hen 'tis void by the death of the Lessor, cannot be perfected by no acceptance. *Leases* 19. *Debt* 122.) Otherwise eems of a Lease for life made by a Par- rendring rent and the successor accepts rent, this affirms the Lease for life. 24 8. *B. Leases* 19. 22 H. 8. 16 14 H. 8. 14 by Brudnel 22 E. 4. 27. by Wood, 4 E. 6. Com. 30. 4 & 5. El. Com. 264. See 32 H. 8. after, & Coke lib. and Tit. Acceptance.

See 37 H. 8. Tit. Attornment.

A man leaſes for ten yeers, and the ne day leaſes the ſame Land to another f twenty yeers: this is a good Leaſe for t laſt ten yeers of the ſecond Leaſe. 26 H 8. *B. Leaſes* 48.

Where a Leaſe for 300 or 400 ye ſhall be Mortmain. See Tit. *Mortmain*.

M. 3. M. 1. accord. 23. H. 8. 31. 3. M. 1. Com. 168. See 6. & 7 E. 6. Com. 85. See 2 M. 1. Com. 103.

A man leaſes a houſe *cum pertin.* Land ſhall paſs by theſe words *cum pe* Contrary, if a man leaſes a houſe *cu omnibus terris eidem pertin.* there Lands to this uſed paſs: and many Gra are *de omnibus terris in D. nuper M naſterii de G. pertin.* and eſpecially heavers that it hath pertained *de tempo &c.* 31 H. 8. *B. Leaſes* 55.

11 E. 3. Fitz. Abbe & See before, and ſee tit. Acceptance, and 38 H. 8 after.

If a Parſon of a Church leaſes for l and dies, the ſucceſſor accepts fealty; ſhall be bound by this during his l *Contra* upon a Leaſe for yeers made him; this ſhall not binde the ſucceſſor acceptance of the rent: for 'twas void the death of the Leſſor. 32 H. 8. *Dean* 20. *Encumbent* 18. *Leaſes* 5

Where a confirmation ſhall be by Biſhop, Dean and Chapt. of a Leaſe m by the Parſon. *Et contra.* See Tit. C *firmation.*

A man is a purchaſer with his wif them and to the heirs of the husband;

fter the husband leases for years and dies, the wife enters, this shall avoid the Lease for her life; but if she dies during the term, there the rest of the term is good to the Lessee against the heir of the husband. And the same Law of a Rent-charge granted out of it: for the husband had thee Fee-simple *tempore*, &c. and might well charge it. And note by all the Justices, that the Guardian in Knights service shall not ouste the termor of the ancestor of the heir. And the same Law of the Lord by Escheat. 36 *H.* 8. *B. Leases* 58.

See 37 H. 8 after; and 35 H. 8 tit. Garde. Fitz: 142. C. cont. Fitz: 198. F. accord.

If a man leases for life to *I.S.* and the next day leases to *W. D.* for twenty yeers, the second Lease is void, if it be not a grant of a Reversion with Attornment: for in Law the Free-hold is more worthy and perdurable then a Lease for yeers. Yet if the Lessee for life dies within the term, the Lease for yeers is good for the rest of the yeers to come. 37 *H.* 8. *B. Leases* 48. *the end.*

H. 1. E. 6. accord. See before. See 36 H. 8 before.

'Twas agreed *per plures*, that where *I.N. convenit & concessit* to *W. S.* that he shall have 28 acres in *D.* for 20 yeers, that this was a good Lease: for this word *concessit* is as strong as *dimisit vel locavit.* 37 *H.* 8. *B. Leases* 60.

Admitted P. 1. E. 6. in Chancery.

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King tenant in Tayl makes a Leaſe for yeers, or life, his iſſue may avoid it. See Tit. *Diſcontinuance in poſſeſſion.*

See 32 H. 8 before, and Tit. Acceptance. 44 E. 3. 11 plur. Fitz: 5. contr. *Lit.* 144.

If a Parſon lets Land for term of yeers rendring rent, and dies, the ſucceſſor receives the rent, the Leaſe is not good againſt him, for he hath not Fee-ſimple. Nor he cannot have a Writ of Right but *Juris utrum*, therefore the receipt of the rent by his ſucceſſor, doth not affirm the Leaſe; for this was void by the death of the Parſon who leaſed. 38 *H.* 8. *B. Leaſes* 18. the end.

See 26 H. 8 and 37 H. 8 before.

'Twas holden by *Bromley* Juſt. and others, that if a man leaſes for 20 yeers, and the next day leaſes for 40 yeers, the ſecond Leaſe ſhall take effect for 40 yeers, *ſ.* after the twenty yeers paſt. *Time. H.* 8. *B. Leaſes* 35. *the end.*

Gooſan Abbot. 14. H. 8. 12. by Carel. & 21 H. 7. 38. by Lee.

'Twas agreed for Law in the Chancery by the Juſtices, that if a Leaſe for yeers be made by a Biſhop, that 'tis not void, but voidable; for he had a Fee-ſimple. Otherwiſe of ſuch a Leaſe by a Parſon; this is void by his death: for he hath not the Fee-ſimple, but 'tis in abeyance. And the Biſhop may have a Writ of Right, or a Writ of Entry *ſine aſſenſu capituli*, where a Parſon ſhall have but a *Juris utrum*. And therefore if the ſucceſſor

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ſſor of a Biſhop, Dean, Prebend, and like, who have a Fee and Leaſe, and e accepts the Rent, this affirms the Leaſe be good. And otherwiſe of ſuch acptance by the ſucceſſor of a Parſon who ade ſuch Leaſe: for this Leaſe is void eſently. But if a Chantry Prieſt makes Leaſe, his ſucceſſor ſhall avoid it, notithſtanding the predeceſſor had a Fee, eauſe that 'tis donative, or preſentative, d then ſuch Leaſe is not perdurable, expt it be confirmed by the Patron in the e caſe, and by the Patron and Ordina- in the other caſe. 2 *E.* 6. *B. Leaſes* 3. *the end.*

See before, and Tit. Acceptance.

A man leaſes for yeers, *habendum poſt imiſſionem in factã* to *I.N. finitã*, and truth *I.N.* hath no Leaſe in it, there the eaſe commences immediately, by *Hales* ſt. and many others. And by him if Prebend makes a Leaſe for 21 yeers by denture rendring the uſual rent, this ſhall nde the ſucceſſor by the Statute of Lea- s: for where the Statute ſaith, *in jure Eccleſiæ*, and the entry for a Prebend *eſt ſitus in jure Prebendæ*, yet it ſhal bind the equity. 3 *E.* 6. *B. Leaſes* 62.

See Coke upon Lit. H. 1. M. 1. accord. See Coke upon Lit. 23 H. 8. ca.

An Executor hath a term and purchaſes e reverſion in Fee, whether the term be tinct, or no. See Tit. *Extinguiſhment.*

1 H. 7. 17. See Tit. Intrusion. Tenant of the King in *Capite* dies, and the heir before Livery sued, makes a Lease for yeers, 'tis good, if no intrusion be found by Office, and an Office found after, which findes the dying seized, and no intrusion, hath not relation to the death of the ancestor, but for the profits, and not to defeat the Lease: for the Free-hold and Inheritance remain in the heir. But if intrusion be found, *tunc nullum accrescit ei liberum tenementum* and then the Lease, and dower of the wife of the heir, are void. 5 *E.* 6. *Leases* 57.

A man possessed of a Lease for 40 yeers grants so many of them as shall be behind at his death, 'tis void. See Tit. *Grants.*

See 3 M. 1. after: contra. See Coke upon Litt. Note, by *Bromley* and others Justices, if I let Land to *W. N. habendum* for 100 *l.* be paid, and without Livery; this 'tis but a Lease at will for the incertainty. But if he makes Livery, the Lessee shall have it for life upon condition implied to cease upon the 100 *l.* levied. 2 *M.* 1. *Leases* 67.

See 37 H. 6 26. 'Tis said that Bishops in the time of *E.* 6. were not sacred, and therefore were not Bishops, and therefore a Lease for yeers by such, and confirmed by the Dean and Chapter, shall not binde the succes-

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for such never were Bishops. Contra of a Bishop deprived who was Bishop indeed at the time of the demise, and confirmation made, 2 *M.* 1. *B. Leases* 68.

What shall be said to be a Lease in reversion, and what a grant of reversion? See Tit. *Attornment.*

'Twas holden by all, if a man Leases Land to another till the Lessee hath levyed 20l, that 'tis a good Lease, notwithstanding the incertainty. 3 *M.* 1. *B. Leases* 67. the end.

See 2 M. 1 before, contra. 14 H. 8. 14 by Brudnel. 4 & 5 E. 6. Com. 70. 4 M. 1. Com. 171 172.

'Twas ruled in the Serjants case, that if a man let Land 4 *Jan. habend.* for forty years, *Reddend. annuatim* at *Mich.* and *Easter* 20 s. the tenant shall pay at *Easter* and at *Mich. 1. equales porciones*, and the Lessor shall not lose the rent at *Easter*. 4. *M.* 1. B. *Leases* 65.

Ley gager, Law wager.

Detinue of a Deed indented, where an obligation of a Lease for term of years, the defendant shall not wage his Law, for this concerns Land, and a Chattel real. And so 'twas late adjudged in the Kings-Bench 34. H. 8. B. *Ley gager* 97.

'Twas said for Law, that a man shall not wage his Law in a *Quo minus*. 35. H. 8. B. *Ley* 102. *Quo minus* 5. *in finibus.* 8 H. 5. Fitz. Ley 66.

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Licenſes.

Twas agreed, that if a Biſhop, Dean and Chapter give their Land in Fee without Licenſe of the King, who is Founder and is found ſo by Office, the King ſhall have the Land. And another Founder may have a *contra formam collationis*. And if he aliens *ſine aſſenſu Decani & Capituli*, then lies the Writ *de ingreſſu ſine aſſenſu Capituli*. 36 H. 8. *B. Licenſes* 21.

Litt. 145.

Lieu, Place.

Place is not material in actions tranſitory. See Tit. *Attaint*.

Where a Recognizance is acknowledged in *London* before a Juſtice of the Common Bench, and certified *in banco*, and there ingroſſed, a *Scire facias* ſhall be brought there directed to the Sheriff of *London*, and not to the Sheriff of *Middleſex* where the Bench is, by all the Prothonotaries of the Common Bench. 4 *M.* 1. *B. Lieu* 85.

Limi-

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Limitations.

Note, that it ſeems cleer, that the new Limitation, and alſo the ancient Limitation extends to Copie-hold, as well as to Free-hold: for the Statute is, that he ſhall not make preſcription, title, nor claim, *&c.* And thoſe who claim by Copie, make preſcription, title, and claim, *&c.* And alſo the plaints are *in natura & forma Brevis Domini Regis ad communem Legem, &c.* And thoſe Writs which now are brought at Common Law, are ruled by the new Limitation, and therefore the plaints of Copie-hold ſhall be of the ſame nature and form. *6 E. 6. B. Limitations* 2. 32 H. 8. ca. 2. Limitation 3.

Livery.

Note, if the King hath a Ward becauſe of Ward, and the firſt Ward comes to full age, and ſues Livery, the other Ward being within age, there the Ward ſhall not ſue Livery, but *ouſter le maine*; for now the Seigniory of his Land is revived by the Livery, ſo that he holds not of the King as afore, but of his immediate Lord. But if the Ward becauſe of Ward See 13. E. 4. 10.

28 H.6.11 Stp. 18. had been of full age before the first Ward, he should sue Livery. 25 *H.* 8. *B. Livery* 47.

Where a woman out of Ward by Marriage shall sue Livery at fourteen yeers. See Tit. *Garde.*

Time. H. 8. after contra. 28H.6.11. He which holds Land within the County Palatine of *Lancaster* of the King in Knight service *ut de Ducato Lancastr.* shall sue Livery. *Contra* of him who holds Land which lies out of the County Palatine of the King in Knight-service *&c.* 28 *H.*8. *B. Livery* 55.

Note, that general Livery cannot be, but upon Office found: but special Livery may be without Office, and without probation of age, but there he shall be bound to a rate and sum certain to be paid to the King. (*B. Livery* 56.) And by *B. ibidem* 31. this cannot be claimed by the Common Law as general Livery may, but is at the will of the King. 28 *H.*8.

If the King purchases a Mannor of which *I. S.* held in Knight service, the tenant shall hold as he held before, and he shall not render Livery nor primer seisin: for he holds not in *Capite*, but holds, *ut de manerio*: And if his heir be in Ward by reason of that, he shall have an *ouster le maine* at full age.

See after.

And

nd 'tis ſaid, if the King after grant the
annor to *W. N.* in fee, excepting the
rvices of *I. S.* now *I. S.* holds of the King,
s of the perſon of the King, and yet he
all not hold in Capite, but ſhall hold
s he held before, for the act of the King
all not prejudice the tenant. But if the
ing give Land to me in fee, *tenend. mi-*
& heredibus meis of the King, *&c.*
nd expreſſes no certain ſervices, I ſhall
old in Capite, for 'tis of the perſon of
e King. And note that tenure in Ca-
ite, is of the perſon of the King. 29 *H.*
.B. *Livery* 57. *Tenures* 61.

Extent of livery is the value of the
and by half a year. But if he intrudes
nd enters without livery, he ſhall pay the
early value by experience of the *Ex-*
hequer. And where *ceſtuy* and uſe
s attainted of Treaſon, and 'tis enacted
y Parliamen, That he ſhall forfeit his
and in poſſeſſion, and in uſe, that
here the King is but a purchaſer, and
herefore thoſe who hold of him that was
ttainted, ſhall not ſue livery. *Quære,*
f it be enacted that he ſhall forfeit it
o the King, his heirs and ſucceſſors. *E-*
ontra, if he had been ſole ſeiſed, and
ad been attainted by the Common Law,
or there the King hath the Land as

King,

See 33. H.8. Tit. Tenures. and 3. El. Com. 241.

33 H.6.7. by Briſot.

8 H.7. 13. 13.H.7.11 by Davers.

See 30. H. 8. Tit. Office devant. &c. 3 El. Com 243. by Carus.

See 31 H. 8. Tit. Alienation. & 32 H. 8. after.

192 King, and there thoſe who held, ſhall ſue livery. And yet the Statute *Si quis temerit de nobis de aliqua chaeta, ut de honore* Wallingford Boſ *&c. non faciet aliud ſervivum qua fecit preantea.* And therefore this intended of a common eſcheat. And a ſo ſome Honours are in *Capite*, as p of *Peverel*, and others. 29 *H.* 8. *Livery* 58.

Magna Charta. cap. 31. Ratt. Tenures.

Stp. 13. The Kings tenant leaſes for years a dies, the heir ſhall ſue livery notwit ſtanding the Leaſe indures. And t ſame where the Father declares his w of the Land for yeers and dies. 30 *H* 8. *B. Livery* 59.

If a man holds of the King before t Statute of uſes, and infeoffs others t his for term of life, the rem' over in ta the rem' to his right heirs, and dies, a after the tenant in tail dies without iſſu the heir of the Feoffer ſhall ſue liver for the fee ſimple was never out of hi and therefore it deſcends to his heir, a if he hath it by deſcent, he ſhall ſue liv ry. And the ſame Law and for the ſam reaſon, if at this day a man gives in tai the rem' to his right heirs. Otherwiſ B. 2. ſeems where a man makes a Feoff ment in fee in poſſeſſion, and diſmiſſe himſel

See 37. H. 8. Tit. diſcent Sir *John Huſſeys* caſe.

mſelf of all, and retakes for term of
e, the rem' in tail, the rem' to his
ght heirs, and dies, and after the te-
nt in tail dies without iſſue, there the
ir, who is right heir is a purchaſer.
nd if the King ſeiſes, he ſhall ſue
fter le main, and ſhall not be com-
lled to ſue livery; But if the tenant
tail had dyed without iſſue in the life
f tenant for life, and after the tenant
r life dies, there his heir ſhall ſue livery,
r the fee ſimple was veſted in the tenant
r life, by extinguiſhment of the mean
em', and therefore the fee ſimple de-
ends. And note, livery is that the King
hall have the value of the land by half
year. And ouſter le main is a Writ
ouſte the King of the Land without a-
y profit given to the King, 32 *H.*8. B.
Livery 61.

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See 29. H. 8. before, and 38 H. 8. after.

Where a man holds certain Land of the
King in Soccage in Capite, the King ſhall
not have liberty of more then the Soccage-
Land, 32 *H.* 8. B. *Garde* 97.

F. N. B. 256. C. See 38. H. 8. after.

He which holds of the King in Knight
ſervice and not in Capite, ſhall not ſue li-
very, becauſe he holds not in Capite, and
there when the heir comes to full age, he
ſhall have an ouſter le main, for none
can enter upon the King. But if he be of
full

See 33. H. 8. Tit. Fe-nuces.

Stp.13. See 32. H. 8. Tit. Demurrer in Law.

full age at the time of the death of his ancestor, then he shall render relief to the King and goe quite, as if he had holden of a common person. *Contra, of Tenure in Capite.* 32 *H.*8.B. *Livery* 62.

Note, that the heir of him who holds of the King in Capite in Soccage shall not render *primer seisin* to the King for all his Lands, but onely for those Lands holden in Soccage in Capite. Contrary of him who holds in Knight service in Capite, by the experience of the *Exchequer*. And the heir which sues Livery shall have in every County a several livery. And note that livery is where the heir hath been in Ward, and comes to full age, he shall have livery *extra manus Regis*. And primer seisin is, where the heir is of full age at the time of the death of his ancestor, or where his tenant holds in Soccage in Capite, and dies, there the King shall have primer seisin of the Land, which amounts to the like charge to the heir, as the livery is. 38 *H.*8.B. *Livery* 60.

Stp.13.2. M.1 Com. 109.2. El. Com. 204 See 32. H. 8. before.

Stp.13.44. E.3.12. Fitx. 257 L. See the extent of it. 32. H. 8. before, and 29. H. 8.

Note that a man cannot sue livery in the *Chancery* for Land in *Wales*, Nor in a County Palatine by experience. *Time* H.8.B. *Livery* 63.

28 H.8. before contra.

If the heir of *cestuy que use* be of full age at the time of the death of his ancestor, the

the King shall not have primer seisin, for 'tis not given by the Stat. but onely the ward of Land and body. And if a will were declared by *cestuy que use*, which is not performed during the nonage of the heir, there the King shall not have the Land, but the heir at full age, shall prove his age, and shall goe quite by experience in the Exchequer. *Casus* B. *Livery* 77. the middle. 27 H.8. 4. Mountague accord 4H.7.c.17 Rast. Wards 20.

Mainprise.

IF a man be arrested in *London*, and finds sureties to the Plaintiff there, and after is dismissed in *banco* by Writ of priviledge, and after a Procedendo comes in the same suit to the court of *London*, this shall not revive the first mainprise, or suretiship, for once dismissed, and always dismissed. And 'tis said that after a man hath found mainprise to a Bill in the Kings Bench, and after is at issue or demurrer, and after is awarded to replead, and to make a new declaration, the Mainprise is by this discharged. Contrary, where they *manuceperunt usque ad finem pliti*, and where the original remains. 32 *H.*8. B. *Mainprise* 96. See 31 H.8 Tit. Procedendo cont.

If

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If a man be convicted of Felony, and remains in prison, and after the King pardons him, there the Justices of Goal-delivery may bail him till the next Sessions of Goal-delivery, so that he may then come with his Pardon, and plead it. 2 *E.6.B. Mainprise* 94.

Maintenance.

19 E. 4. 3. Ascue & Markham accord. 21 H. 6. 16. 14 H. 7. 2. by Rede. See H. 6 & 7. E. 6. 33.

Note, by all, where Tenant in Tayl, or for term of Life, is impleaded, he in rem or reversion, may maintain, and give of his proper money to maintain for safeguard of his interest: for 'twas agreed that he who hath an interest in the Land may maintain to save it. 1 *E. 6. B. Maintenance* 53.

32 H. 8. ca. 9. See H. 6 & 7. E. 6. Com. 88, 89.

Note, that upon the Statute of buying Titles, and to maintain that a man shall not buy Land, except the vendor hath been in possession, *&c.* by a yeer before, 'twas agreed by *Mountague* chief Justice, and by all of Serjeants Inne in Fleet-street, that if a man morgages his Land, and redeems it, he may sell his Land *infra unum annum prox. &c.* without danger of the State aforesaid: for so is the intendment of the Statute: for the ancient Statutes are, That none shall maintain; and yet a man

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n may maintain his Couſin, and ſo of
e like: for 'tis not intended, but of un-
wful maintenance; and ſo of a preten-
d Title, and not of that which is clear
tle: 6 *E.6. B. Maintenance* 38.

Mannor.

A man cannot make a Mannor at this
y, notwithſtanding that he gives Land
many ſeverally in Tayl, to hold of him
Services, and ſuit of his Court: for he
y make a Tenure, but not a Court: for
Court cannot be but by continuance, *cu-*
m contrarium memoria hominum non
exiſtit. And 'tis ſaid for Law, that if a
lannor be, and all the Free-tenures eſ-
eat to the Lord, but one, or if he pur-
haſes all but one, there after this the
lannor is extinct: for there cannot be a
lannor, except there be a Court-Baron
o it. And a Court-Baron cannot be
olden but before Suitors, and not before
e Suitor: therefore one Free-holder
ely cannot make a Mannor. 33 *H.* 8.
Compriſe 31. *Mannor* 5.

See 35 H. 8 Tit. Tenures.

See 23 H. 8 tit. Court-Baron, & Time. H. 8 Tit. Suitor.

Miſ-

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Misnosmer, Misnamer.

A Statute was acknowledged by man in the name of *I. S. de D. in Co E. Butcher*, and he was taken upon Pr ceſs, and ſaid in avoydance of the Statut that he was always dwelling at *S.* a not at *D.* and was a Husbandman, and n a Butcher; and that *I. S.* of *D.* ackno ledged the Statute without this, that he the ſame perſon that acknowledged which Plea was refuſed, for a great inco venience that might fall upon it. 36 *H. B. Misnosmer* 34. *the end.*

Monſtrans de faits, Shewing of Deeds.

See Cokes books. See that he which pleads a Deed Record, or which declares upon a Deed Record, it behoves him to ſhew it: Oyer of thoſe is always to be had by h which is charged by it. *Regula Monſtrans* 165. *Oyer de Recordes the end.*

Mortdaunceſtor.

By the beſt opinion in the Comm Bench, if two purchaſe jointly to them

to the heires of one, and he which hath the Fee dies, and after the other dies, the heir of the first shall not have a *Mortdaunceſtor* (and B. seems the reason to be, because the Fee was not executed in Poſſeſſion, by reason of the survivor of the other, and tis in effect now but the diſcent of a reverſion) and the wife of him who had the Fee, shall not have Dower, and yet he might have forfeited the Fee simple or given it by Feoffement, but not by grant of the Reverſion. 12. *E.* 4. 2. and joyn the Miſe in a Writ of Right, for he in Reverſion, and the Tenant for life may do it. *Quare*, if he may releaſe it. 29. *H.* 8. B. *Mortdaunceſtor*. 59.

See Cokes Rep. 199

Mortmain.

Lord and Tenant, the Tenant leaſes for life to *I S.* the remainder to an Abbot and his ſucceſſors, the Lord need not to make claim, till the Tenant for life be dead; for if he will wave the Remainder tis not Mortmain. But of a grant of a Reverſion with Attornment, tis otherwiſe. And if the Tenant makes a Feoffment in Fee, to the

use of *A.* for life, and after to the use of an Abbot and his succeſſors, there tis not Mortmain, till the Tenant for life in uſe dies, and he in Remainder takes the profits. Note that appropriation of an advowſon without licence is Mortmain. 25. H8. *B. Mortmain.* 37.

8. H 4. 15. B. Mortmain 11. If a man leaſes to an Abbot and his ſucceſſors, or to another Religious perſon for a 100 years, and ſo from a 100. years to a 100 years, untill 300 years be incurred, this is one Leaſe, and ſuch Leaſe is Mortmain by the words of the Statute *de religioſis.* 7 E 1 *S. colore termini*, for the ſaid Statute is, *quod nullus emeret, vel ſub colore donationis aut termini, aut ratione alterius tituli ab aliquo reciperi, aut arte vel ingenio ſibi appropriare preſumat*, &c. And the ſame Law of a Leaſe for 400 years, or the like, Contrary, if a man leaſes for a 100 years, or the like, and covenants that he or his heirs at the end of a 100 years, will make another Leaſe for another 100 years, and ſo further, this is not Mortmain, for tis but one Leaſe for a 100 years, and the reſt is but a Covenant, but in the firſt caſe, for that is for 300 years

6. El. Com. 273.

3. E 4. 12. by Nele accord.

years at first in effect, and all by one and the same Deed, (*B. Mortmain* 30. *Leases* 49.) And 99 years is not Mortmain. And also a Lease for a 100 years is not Mortmain by *B.* for tis a usual term. 29. *H.* 8. *B. Mortmain* 30.

3. E 4. 13. by Nele contra. 47. E. 3. 11. see 1. R. 6. Tit. Devise.

By *Br.* if an alienation in *Mortmain* be, and the alienee is disseised, and the disseisor dies seised, his heir is in by discent, yet the Lord may enter within the year, for he hath but onely a Title of Entry, and cannot have an Action. But otherwise of him who hath right of Entry, and may have an Action. 1. *E.* 6. *B. Mortmain.* 6. the end.

Negativa pregnans; see Tit. Iſſues joyns.

Non-ability.

WHere, and in what Caſe an Alien is diſabled from bringing of an Action, what not? See *Tit. Alien.*

Non eſt factum.

See Cokes Rep. Whelpdales caſe

Note, that in Debt upon an obligation made for Uſury, and the Defendant pleads this matter, he ſhall conclude, and ſo the obligation is void Judgement *ſi actio*, and ſhall not conclude *non eſt factum*. 7. *E.* 6. *B. Non eſt factum*. 14. the end.

Nonſuit

Note, that the King cannot be nonsuited; Yet *B.* seems that he who *tam pro Domino rege, quam pro seipso sequitur* may be nonsuited. 25, *H.* 8. B. *Nonsuit.* 68. Entries?

Note, when the parties in an Action have demurred in judgement, and have a day over, there at that day the Plaintiff may be demanded, and may be nonsuited, as well as at a day given after issue joyned. 38. *H.* 8. B. *Nonsuit.* 67. 14. H. 8. 24 per Cur. 28. H. 6. 8. & 4. E 4. 24 accord.

Nontenure.

Where a man is barred by a false verdict, and brings an attaint against the first Tenant, *nontenure* is no plea, for he is privy; contrary of a stranger, as where the Tenant infeoffs a stranger after. 19. *H.* 8. B. *Nontenure* 6. See 20 H. 8. after.

In an attaint *Non tenure* is no plea for a privy to the first action: *contra* for a stranger to the first Action (B. *Nontenure* 16.) And tis said that tis no plea in an attaint, to say that the Plaintiff in the Attaint hath entered after the last continuance. 20. H. 8. B. *Nontenure* 22. 29 H. 8. 2 see 19 H. 8. before.

Nontenure is no plea in Waſte. See 14. H. 6. Tit. *Waſte.* 2.

Noſme. Name.

See Cokes Rep. the Counteſs of Rutlands Caſe: noble, by mariage loſes her dignitie: inſuch caſe not noble by diſcent.

What ſhall be a good name of Purchaſe. See Tit. *Diſcent.*

Note, if a Dutcheſs, or other ſuch ſtate marries with a Gentleman or an Eſquire, ſhe by this ſhal loſe her dignity and name by which ſhe was called before as in the caſe of the Lady *Powes*, and Dutches of *Suffolk*, the one eſpouſed *R. Haward*, and the other *S.* the Dutches, *Adrian Stokes*; and therefore Writs were abated in their Caſes; For by the book of Heralds; *quando mulier nobilis nupſerit ignobili, deſinit eſſe nobilis.* 4. *M.* 1. B. *Brief*: 546. *Noſme.* 69.

Fitz. 35. H.

Notice.

The Patron ſhall take notice of every voidance of an Advowſon, except reſignation, and of this the ordinary ſhall give him notice. *Lecture Frowick. B. Notice* 27.

Office

Office devant, &c.

Office before, &c.

NOTE, by those of the Exchequer; where a man is attainted by Parliament, and all his Lands to be forfeited; and doth not say that they shall be in the King without Office, there they are not in seisure of the King without Office, for *non constat* of Record what Lands they are. 27.*H*.8.B *Office devant* 17. See 35.H 8. Tit. Forfeiture. St. 54.

If the King grant Land for term of life, & after the Patentee dies, yet the King cannot grant it over till the death be found by office, & this by reason of the Stat. that a grant before 18.H.6. cap.6,

office ſhall be void. 29. H. 8. *B. Office devant* 56.

If an Office finde the death of the Kings Tenant, and that his heir is of full age, and doth not ſay when, there it ſhall be intended that he is of full age, *tempore captionis inquiſitionis*, but that he was within age *tempore mortis tenentis*, and therefore it ought to be expreſſed certain when he was of full age. 29. *H.* 8. *B. Office devant* 58.

See 13. H. 7. 11. Note, that tis an antient courſe in the Exchequer, that if it be found by Office that *I S.* was ſeiſed in Fee and died, *ſed de quo vel de quibus tenementa tenentur, ignorant*, that a Commiſſion ſhall iſſue to enquire of it certainly, *de quo &c.* and if it be found that of *W. N.* then the party ſhall have *Ouſter l'main* of the King.

Kings. & Fineux accord. 13. H. 7. 5 & 9. 26. H 8. 9. by Bromley ſee 29. H 8. Tit. Livery. 2 E. 6. cap. 8. But if an Office be found, *quod tenetur de Rege, ſed per que ſervitia ignoratur*, this is good for the King, and it ſhall be intended to be holden in *Capite per ſervitium Militare*, for the beſt ſhall be taken for the King. But now in theſe caſes a *Melius inquirendum* ſhall be awarded by the Statute 30. *H.* 8. *B. Office devant.* 59.

Land

Land was given by the King *pro erectione Collegii Cardinalis Eborum*, and the Colledg was not erected, and upon office found thereof, the King ſeiſed. *Time. H.* 8. B. Office. 4. the end. 3. E. Com. 229. See after.

Twas agreed by the Juſtices, that the King is not intitled to the land of his ward without office, though he hath in it but a Chattell, yet it comes *ratione tenure*, which is a ſeigniory and free hold in the King. 5. *E.* 6. B. *Office devant.* 55. See 5. E. 6. before.

Note, that of a Chattell the King is in poſſeſſion without office. And *contra* of land and of free hold, except of a term; And ſometimes he ſhall be in poſſeſſion of inheritance without office; yet the King ſhall not have the land of his ward without office, though he hath in it but a Chattel; for the ward comes by reaſon of the tenure, which is a ſeigniory and free hold in the King, and therefore a difference betwixt this, and a leaſe for years of a man outlawed: For if a man hath a term for years, or a ward, and is outlawed, this is in the King without office. *Lecture* B. *Office devant.* 60.

Office.

Note, for Law, if a man hath a fee of a Lord, and after is made Juſtice, this fee is not void by the Law, but after the making of him Juſtice, he is not to take any fee, but of the King; and the ſame law of him who hath an office of Steward, and after is made Juſtice.

39. H. 6. 5. by Priſot. See. 5 M. 1. Tit. Commiſſion. *Et per plures* where a man is a Baily of a Mannor by patent, and after is made Steward of the ſame Mannor by another patent, both patents are good; For the Suitors are Judges, and not the Baily. But *per plures* if a man be a Forreſter by patent, and after is made Juſtice of the ſame Forreſt, the firſt patent is void. As where a Parſon is made a Biſhop, the Parſonage is void, for

10. H. 7. 7. by Vaviſor. 15. E. 4. 3. by Brian. he cannot be ordinary of himſelf, nor puniſh himſelf. And B accords that a man cannot be Keeper of a Forreſt, and Juſtice of the Forreſt, for the killing of the Deer by the Keeper, and the like, is a forfeiture of his office, which ſhall be adjudged by the Juſtices of the Forreſt, and he cannot judge himſelf. But a man may be a Steward of a Forreſt by patent, and Juſtice of the ſame Forreſt by another patent, and both

both good, for both are judicial, And Juſtices of the Forreſt may make a Steward of the Forreſt. 29. H. 8. B. *Officer.* 47.

Note, that the Sheriff and Eſcheator void their office by demiſe of the King, for they are made by patents, which are as a commiſſion is, and therefore tis uſed at the demiſe of the King for to ſue out new patents, as 'twas this year. 1. *M.* 1. *B. Officer.* 25, the end. See Coke Rep. Caſe of Diſcontinuance, .

Obligation.

If *A.* be bound to *B.* in 40. *s. ad uſum* I.S. there *I.S.* may releaſe the obligation, becauſe that (*ad uſum*) is expreſſed in the obligation. *Et econtra* if this did not appear in the obligation. 36. *H.* 8. *B. Obligation* 72. See Billing. 2. E. 4. 2.

Oyer of Records, &c. ſee Tit. Monſtrans de faits.

Oyer & Terminer.

Tis ſaid that if a Commiſſion of *Oyer and Terminer* expire or diſcontinue, then the indictments and record ſhall be ſent into the Kings Bench, and there they

they ſhall be finiſhed (ſee how *Tit. Corone.*) 38. *H.*B. *Oyer & Terminer.* 1. the end.

Twas granted in the caſe of *Ben: Smith* upon the Statute of 2. *E:* 6. *cap:* 24. of Felony in one County, and acceſſary in another County; that the Juſtices of the Kings Bench are Juſtices of *Oyer* and *Terminer* of Felony, Treaſons, and the like, by the Common Law, and Cuſtom of the Realm. 3. *M.* 1. B. *Oyer & Terminer.* 8.

Pain.

TWas adjudged in *Curia hoſpitii Domini Regis apud* Greenwich *verſus* Edmundum Knivet *militem*, that he ſhould be diſinherited, impriſoned for ever, and his hands cut off, *quia percuſſit quendam hominem ibidem*, the King being there in his Court. 33. *H.* 8. B. *Pain* 16. the end.

See St. 38. C.

Panell.

Twas agreed in the Exchequer where a jury is awarded *de medietate linguæ*, where an alien is party, and the panel returned, that the one of the denizens and the other of aliens shall be sworn, till they have 6 denizens, and 6 aliens sworn. The same Law there, where the jury remains for default of jurors, there a Tail shall be part of English, and part of aliens, and this if the party prayes it. But if he doth not pray it, B. seems tis error, except by the Statute of *Jeofails* it be holpen: 32. H. 8. and so by him where the panel is party, the party is not compellable to take the jury, except 6 of the one, and 6 of the other are sworn. 4. *E.* 6. B. *Panel* 2. the end.

See Coke upon Lit. & Dyer contra. 32. H. 8. cap.

Parliament.

If the King be intitled to the land of *I.S.* by forfeiture of Treason, or Felony, by act of Parliament or office, by this all tenures are determined, as well of the King, as of all others. And there, if this land after be given to another, by another Act of Parliament saving to all

See 31 H 8. Tit. Extinguishment.

all others all their Rights, Interests, Titles, Rent-service, and the like, as if no such Act had been, there the Seigniories and the like shall not be revived, for no Seigniorie was in *esse* at the time of the second Act made. And here are not words of Gift, nor Reviving, but words of Saving, which serves not but to save that which in *esse* at the time of the Saving, *&c.* But such *Proviso* in the first Act would serve; for this comes with the Act which Intitles the King. And where the King is Intitled to Land by Office for Escheat, and after tis enacted by Parliament that the King shall enjoy it, saving to all others their Seigniories, and the like, there such Saving will not serve (for the reason aforesaid) for all was extinct before by the Office, and nothing was in *esse* at the time of the Saving (which was in ure between the King and *Keckwich* in the County of *Essex*, where *R.* lost his Seigniory) But there ought to be words affirmative, that the Lords shall have their Seigniories. 27. *H.* 8. *B. Parliament* 77.

35. H. 6. 34. Danby accord.

See 34 H 8. Tit. Remitter. & Dyer.

Note by *Englefield* Justice, in the Case between *Button* and *Savage*, that where a man hath Title to Land by a

Tail

Tail, and after the ſame Land is given to him by Parliament, that his Heirs ſhall not be remitted; for by the Act of Parliament all other Titles are excluded for ever; for this is a Judgement of the Parliament: And where the Land is given expreſly to any perſon by name, by Act of Parliament, he, nor his Heirs ſhall not have other Eſtate then is given by the Act, but that that onely ſhall ſtand. (*B. Parliament* 73. *Remitter* 9. the end.) And the ſame Law where the King had Title in Tail, and the Land is given to him by Parliament in fee, the Tail is determined. So that the Heir ſhall not avoid Leaſes made by his Father, nor Charges, and the like; for the laſt Statute bindes all former Titles and Eſtates not excepted. 9. *H.* 8. *B. Parliament.* 73.

If divers Seſſions are in one and the ſame Parliament, and the ſignes not a Bill till at laſt, there all is but one and the ſame day, and all ſhall have relation to the firſt day of the firſt Seſſions, and the firſt day and the laſt, all is but one and the ſame Parliament, and one and the ſame day in Law, except ſpecial mention be made in the Act when it ſhall take force. But every Seſſions in which H. 6 & 7. E. 6. *Com* 79. per Juſticiarios.

H.6.&7. E.6.com 79 by Hales Juſt.

which the King ſignes the Bills, is a da by it ſelf, and a Parliament by it ſel and ſhall not have other relation but t the ſame Seſſions. 33.*H.* 8. *B. Parli ment* 86. *Relation* 35.

See 32.H 8.Tit. Demurror in Law. 6,&7.E. 6.Com. 79.84.

Note, if a man in an Action, or plea ding alledges a Statute, and miſ-recite it in matter, or in year, day, or place the other may demurr generally, ſo there is no ſuch Statute, and then ther is no ſuch Law, for every one that me dles with it, ought to ſhew the La truely. But in caſe of the King it ma be amended, and this in another Tetm Contrary for a common perſon. 33. *H* 8. *B. Parliament* 87.

Memorandum, that at the Parli ment holden by adjournment *H.* th year, twas admitted by the Kings Wri and ſo accepted, that if one Burgeſs b made Major of a Town which hath j dicial juriſdiction, and another is ſic that theſe are ſufficient cauſes to ele new ones, wherefore they did ſo b the Kings Writ out of the Chancer compriſing this matter, which was a mitted and accepted in the Commo Houſe of Parliament. 38.*H.*8.*B. Par ament.*7.

Parnour, Taker of the profits.

An Office is found after the death *Ceſt*

Ceſtuy que uſe that he died ſeiſed, and the heir is in ward of the King, and after a Recovery is had againſt the Heir during the Poſſeſſion of the King as againſt the Pernour of the profits, before the Statute of Uſes 27. *H.* 8. the Feoffees traverſe the office, or ſue an *Ouſter l'main*, this Recovery ſhall binde the heir, but the Recoverer cannot enter during the Poſſeſſion of the King. 29. *H.* 8. *B. Pernour* 32. 27. H. 8. cap. 10. Raſt. Uſes 4. 9. E 4. 24. 26. H. 8. 3. 8. 13. H. 7. 15. Vavi. for accord.

A man cannot aver another Pernour of the Profits of other things, which are not in demand. *B Pernour* 4. the middle.

Patents.

The King gives Land to *I: S. Et heredibus maſculis ſuis*, the grant is void. See *Tit Eſtates.*

If the King Licences his Tenant to alien his Mannor of *D.* and he aliens it except one acre, the licence ſhall not ſerve it, for the King is not aſſertained of his Tenant of all. And if I have a Licence to impark 200 acres, and do it according, and after increaſe by other 10 acres, there this is not a Park. 23. *H.* 8. *B.* Patents. 76. See Stp. 31.

If the King grants *omnia terras & tenementa ſua* in *D.* this is a good grant

theſe general words. 30. *H.* 8. *B. Patents* 95.

The King gave to the Earl of *Rutland* in Tail, and after intended to give to him in Fee ſimple, and to extinct the Tail, and twas doubted that the ſurrender of the Letters Patents of the Tail, and the cancelling of them, and of the Inrollment and Bill aſſigned, will not extinct the Tail, for the Tail executed may be averred without ſhewing the Patent. And a *Formedon* lies after the Tail executep, without ſhewing the Patent. And twas taken that twas not a good ſurety for the King, for his ſervices to give the reverſion, to to hold the reverſion by ſuch ſervices when it veſts, and to except the firſt ſervices during the Tail, for when the reverſion is gone, the Rent and Services reſerved upon the Tail, are gone as wel in caſe of the King, as a common perſon. And therefore the deviſe was, that the King by a new Patent, reciting the firſt Patent, ſhall give the Reverſion, and the firſt Rent and Services to have in Fee, to hold by ſuch Services, and rendring ſuch Rent, and by this the King ſhall have the new Tenur preſently, and the Grantee ſhal not

4. E6. Com. 5. ècontra.

not be charged with double Services and Rents during the Tail, and twas agreed for Law, that if a man loſes his Letters Patents, he ſhall have a *Conſtat* of the Letters Patents out of the Inrolment, and Bill aſſigned, which remains in the Chancery: And therefore B. ſeems that the Inrolment ſhall not be cancelled (B. *Patents* 97) And twas agreed by *Whorewood* the Kings Attorney, *& optimos legis peritos*, that if Tenant in Tail of the Gift of the King ſurrenders his Letters Patents, this ſhal not extinct the Tail, for the Inrolment remains of Record, out of which the iſſue in Tail may have a *Conſtat*, and recover the Land, wherefore they made the Deviſe aforeſaid, *viz.* that the King ſhall grant to the ſaid Earl Tenant in Tail the Fee ſimple alſo, and then a Recovery againſt him will barr the Tail. Otherwiſe the Reverſion being in the King (B. *Surrenders* 51.) And tis ſaid for Law, if the King gives in Fee, or in Tail, or for life, the Patentee Leaſes for years, or grants, Leaſes, or gives part of the Land or of the Intereſt to another, and after ſurrenders his Patent, by which tis cancelled, this ſhall not prejudice the third perſon

See 35. H 8. Tit. Tail, contra.

See 12. H 7. 12. by Fiſher.

See 32. H 8. Tit. Diſcontinuance de poſſeſſion.

ſon, that he ſhall loſe his intereſt by it: for he may have a *Conſtat* out of the enrolment which ſhall ſerve him. *Quære inde*, becauſe a Statute is made of
4.E.6.c. 4. it. And Quære if the Common Law ſhall not ſerve: for it appears in the book of Entries fo. that a man pleaded a *Conſtat*, 32. H. 8. B. *Pattents* 79. the end. *Surrender* 51.

What thing in action the King may grant, what not? See Tit. *Choiſe in action.*

If the King grant a Balywick, or ſheriffwick to I. S. *abſque compoto reddend.* the word *abſque compot.* is worth nothing: for tis contrary to the Nature of the thing granted, 36. *H.* 8. *B. pattents* 99.

If Conuſance of plea be granted by the King, he ought to ſhew where; as in *Guild-hall*, or the like; and before whom, as before his Steward, &c. And the King may grant Toll, Fair, Market, and the like: but not to have Affiſe of Freſh force, nor Toll traverſe, nor Through Toll, nor that the Land ſhall
2.H7.13. by Keble 37.H.6. 27. by Litt. be Deviſable, Borrough-Engliſh Gavelkinde, nor the like: for theſe are by Cuſtom, which cannot commence at this day by grant: for the King cannot make

make a Law by his grant: and that by grant of Conuſance of pleas, he ſhall not hold plea of an aſſiſe, nor of a certificate of aſſiſe. Abr' of the Aſſ. 56 9. H. 6. 27. by Martin.

And tis ſaid for Law, That a falſe conſideration in Letters patents ſhal not avoid them: as where the King for ten pound to him paid, gave ſuch Land, and the ten pound is not paid, the patent is not void, ſhall not be repealed: Contrary of a patent granted upon a falſe ſurmiſe: as to falſifie that the land came to the King by attainder of I. S. which is not true, or the like. Quære, the diverſity, 37. H. 8. B. *patents* 100. 44. E. 3. 18. by Thorp. Fitz. accord. 26. H. 8. 1. & 21. E 48. by Huſſey. 3. H. 7. 6. 11. E 41. by Litt. See Coke Rep. Altonwoods caſe. Time E. 6. accord.

Where the King, Tenant in Tail, cannot diſcontinue, or charge by grant, by patent, See Tit. *Diſcontinuance de poſſeſſion.* See 38 H 8. Tit. Diſcontinuance de poſſeſſion. & Cokes Rep.

Note, that twas agreed, That where the King grants Land which is in Leaſe for tearm of years, of one who was attainted, or of an Abby, and the like, that the grant is good without recital of the Leaſe of him who was attainted, or of the Abby: for he ſhall not recite any Leaſe but Leaſes of Record, *Time H. 8. B. patents* 93.

Twas granted in the caſe of *Thomas Inglefield*, Knight, where the

38.H. 6. 37.by Danby. King Recits, *quod cum* A.B. *tenet manerium de B. pro termino vitæ ſuæ de conceſſione noſtra*, &c. *Sciatis nos conceſſiſſe C. S. reverſionem manerii predict*, &c. *Habendum*, &c. that this is a good Grant. Therefor *B.* ſeems that if the King miſ-recites the date of the firſt Letters Patents, or the like, yet if he well recites the eſtate and the thing, and the name of the Leſſee, that then the Grant of the Reverſion is good. For where the King takes notice of his Tenant for term of life, and of his eſtate, and grants the Reverſion, he is not deceived in his Grant, for he takes upon him notice of the former Intereſt for life, and then the date of the firſt Patent is not material. *Time H.* 8. *B. Patents* 96.

By *Mervin* Juſtice, a *Conſtat* is pleadable; contrary of an *Inſpeximus*, for in the one caſe the Patent remains, and in the other tis loſt, And by *B.* in the Book of entries a *Conſtat* was pleaded, and aid granted of the King upon it. 1. *E.* 6. *B. Patents* 97. the end.

Sec 32. H. 8. before.

Peace:

A man is bound to the peace, and procures another to break the peace, this

is

is a forfeiture of his Bond, as twas ſaid *Time.* H. 8. *B. Peace* 20.

Peremptorie.

A man recovers debt or damages and after brings thereof a *Scire Fac'* the firſt return of *Nihil* againſt the Defendant is peremptory, if he makes default. 24. H. 8. B. *Peremptorie.* 63. 8 E4.15. by Danby.

Where a man brings an Action real or mixt, or makes an avowry or conuſans, and iſſue is taken upon the ſeiſin *infra tempus ſtatuti*, and tis found againſt the demandant, Plaintiff, or avowant, this is peremptory by the ſame Statute. 1. *M.* 1. B. *Peremptorie.* 78.

Petition.

Tis held for Law, if the King be Intitled by double matter of Record, as tis enacted by Parliament, that *I. S.* ſhal be attainted of Treaſon, or Felony, and ſhall forfeit all his Lands, and alſo an Office is found thereof, there the party who hath right, cannot traverſe, but is put to petition. And the ſame Law if the King grant it over after the double matter of Record found. 33. H. 8. B. *Petition.* 35. *Trovers de office* 51. 3. H 7. 3. by Keble 3. E. 4. 25. & 4. E 4. 25 See Cokes Rep. Communalty of Sadlers Caſe & Tit. Traverſs &c. 10. H. 6. 15. 4. E 4. 25.

Note, That Petition was at Common Law, but Traverse is by Statute, *Lecture B. Petition* 41. *Travers de office* 54. See Tit. *Travers de Office.*

Pledges.

22. E. 4. 11. accord

A man gages his goods in pledge for 40 *l.* borrowed, and after the Debtor is convicted in 100 *l.* in debt to another, these goods shall not be taken in Execution till the 40 *l.* be paid: for the Creditor hath an interest in them: and also goods taken for Distress, cannot be taken in Execution, 34. H. 8. B. *pledges* 28.

Pleadings.

22 E. 4. 32. by Brian.

Note that it is said for Law, That he which pleads a Recovery by default, ought to aver his Title of his Writ. And also that the Defendant in the Recovery was Tenant of the Free-hold *die brevis*: but if the recovery were by action tried, he needs not to take the one averment or the other. Yet twas said, that in a *quod ei deforceat* he that pleads the recovery by defalt, need not aver the party tenant of the Freehold *tempore brevis sui*, for tis proved that he was Tenant

tempore,

tempore, &c. by the use of the *Quod ei deforceat*, for this is the effect of this action; because that the Demandant in this action, lost by default in the first action: yet he shall aver the Title of his Writ.

And he which pleads a Recovery in a Writ of Waste by default, needs not to aver the party Tenant; for Non Tenure in this action is no Plea. 24. *H.* 8. *B. Pleadings* 6. 36 H. 6. 29.

He which pleads an entry for to defeat a Collateral Warranty, ought to aver that he entred in the life of the Ancestor. And in Dower if the Tenant pleads a disseisin by the husband, and the wife pleads a Feoffment by I. N. to the husband, who after infeoffed the Tenant, and after disseised him, she shal say that the Feoffment of *I.* and the seisin of the husband, were during the coverture; and he which derives an interest by Lease from Tenant for life, or in Tail, ought to aver the life of the Tenant for life, or in Tail, 26. *H.* 8. B. *pleadings* 147. 3 H. 7. 2. 4 E. 6. Com. 46 19. H. 6. 74. 13 H. 8. 15. by Wilby.

Where a man ought to aver, that the one and the other are one, and not divers, See Tit. *Averments*.

Where a stranger to a Deed may plead

plead it, where not? See Tit. *Estranger.*

See Tit. Titles. Note, for Law, That tis good pleading to say, that I. N. and W. N. were seised *in Dominico pro ut de Feodo ad usum T. P.* and his Heirs, without shewing the Commencement of the use; as to say, that *A.* was seised in Fee, and infeoffed *I. N.* and *W. N. ad usum T. P.* &c. But a man cannot plead that *A.* B. was seised in Tail without shewing the gift; for the one is a particular estate, and not the other, 36, *H.* 8. B. *Pleadings* 160.

Plenartie:

See 13. H. 8. fo. 13. by Newd. & fo. 14. by Brud. 33 H. 6. 12. Note, when there is no Patron, as where the Patron is a Priest and is admitted to this Benifice himselfe. Or where my Advowson is aliened in Mortmain, and appropriated to the House of Religion, and the like: in these cases *I.* may have a *Quare impedit*, and there Plenarty by six Months is no plea, 6. H. 8. B. *Plenartie* 10.

Pre-

Premunire.

Premunire by Bil in the Kings bench, See Tit. *Bill.* See 2 and. 44 E. 3.

A Prohibition lies often where a Premunire lies not; as of great Trees, *vel pro decimis, de ceptima parte*, prohibition lies, and not a Premunire; for the nature of the action belongs to the Spiritual Court, but not the cauſe in this form. But where tis of a lay thing which never appertained to the Spiritual Court, of this a Premunire lies. as of Debt againſt Executors upon a ſimple contract, or *pro leſione fidei*, upon a promiſe to pay 10 *l.* by ſuch a day, 24. H. 8. B. *Premunire* 16. 32. & D. S. 57. 104. 44 E. 3. 36. accord. See D. S. 106 & 8 E. 4. 13. by Catesby that a prohibition lies.

Where a man attainted in a Premunire ſhall forfeit his Lands in Fee *imperpetuum*, See Tit. *Forfeiture de terre*, &c.

Prerogative:

A man hath land in uſe; of which, part is holden of *A.* by prioritie, and the reſt of the King by Poſterity in Knights ſervice, and dies, the King ſhal have the ward of the body by his prorogative, See 3 El. com 240

gative, and by the Statute of 4. *H.* 7. which gives the ward of *Ceſtuy que uſe* where no will is declared; and *per prerogativam regis*: Yet otherwiſe tis ſaid of land in uſe holden of a common perſon; for the Tenant in uſe dyed not ſeiſed, and therefore out of the caſe of Prerogative for the Land, 21. *H.* 8. B. *Prerogative* 29.

4. H. 7. ca. 17. Pre. Re. ca. 2. Stp. 9. & 4. E. 6. Com. 59. by Montague contra.

Note, by *Whorewood* the Kings Attorney, and others: where an information is in the Exchequer upon a penal Statute, and the Defendant makes his bar, and traverſes the Plea, that the King is bound to ſtand to the firſt traverſe, which tenders an iſſue, and cannot waive ſuch iſſue tendered, and traverſe the former matter of the Plea, as he may upon a traverſe of an office, and the like where the King is ſole party and intitled by matter of Record; for upon the information there is no office found before: and alſo a ſubject is party with the King for to recover the moytie or the like, 34: *H.* 8. B. *Prerogative* 116.

See 38 H. 8. Tit. traverſe. See 6 & 7 E. 6. com 85. & 3. El. com. 263. 13 E. 4. 3 Stp. 65.

Shelley Juſt. was preciſe that a gift of the King is good of Chattels moveables without writing; as of a horſe and

See 2 E. 6. Tit. Done.

nd the like 35: *H.* 8. *B. Prærogat:* 60. nd 71. the ends.

Note by ſome, the King ſhall not ave a *Precipe quod redd.* (as a Writ of ſcheat) but his Title ſhall be found y Office. *Time H.* 8. *B. Prærogative* 119.

Where the King ſhall have his age? here not? See *Tit. Age.*

Tis ſaid if an information be by a ſubect for the King in the Exchequer, and he Defendant pleads a Bar, and traverſes the information, the King may traerſe the matter of the Bar if he will, nd is not bound to maintain the matr which is contained in the *abſque hoc* .E. 6. *B. Prærogative* 65. the end. 34 H. 8. before. & 38. H. 8. Tit. Travers per &c. è contra. Br. Traverſe per 207.

The Prerogative of the King is a reatiſe of the Common Law, and not tatute nor Declaration by Parliament. nd a Mine of *Ore*, or *Argent* is to the wner of the ſoil. *Quare, Lecture B. rærog.* 134. Prærogativa Reg.

Where the Incumbent is made a Biop, the King ſhall preſent by his Prerogative, See Tit. *Preſentation.*

Pre-

Where preſcription ſhall be gone by acceptance of a grant of the thing, See Tit. *Eſtopel.*

See *Coke* upon Lit

Twas ſaid for Law, that a cuſtom may be alledged where there is no perſon that can preſcribe: as inhabitant cannot preſcribe: but they may alleadge a cuſtom that the inhabitants may Common in *D.* for the one goes with the place, and the other with the perſon, which perſon ought to be able to preſcribe; for otherwiſe tis wort nothing, 2.*M.*1.B.*Preſcription*, 100 the end.

15.H. 7. 7. contra per curiam, as I take it

See 33.H 8.after. & Dyer.

Note, by the Juſtices, that if a man grant *prox. preſentationem* to *A.* and after before avoidance *grants prox. preſentationem ejuſdem Eccleſiæ* to B. the ſecond grant is void: for this was granted over by the Grantor before: and he ſhall not have the ſecond preſentation for the grant doth not import it, 20.H. 8.B. *Preſentation* 52.

See 20H. 8.before. & Dyer.

A man grants *prox. preſentationem* and hath a wife and dies, the Grantee ſhall have the firſt preſentation, the heir the ſecond, and the wife for Dowre the third, 33.H.8.B. *Preſentation* 55.

Note

Note, by B. That the Biſhop of E- y ſaid to him, that he ſaw a preſentati- on in the time of *E.* 3. made by the ſaid King: That he preſented to a Be- nifice *pro illa vice*, which was of another atronage, by theſe words, *ratione præ- rogative ſue*, which Benefice voided by eaſon that the King had made the in- umbent of it a Biſhop, who was conſe- rated: ſo that when a Benefice becoms oid by making of an incumbent a Bi- hop, the King ſhall preſent to all his ormer benefices *pro illa vice*, whoſoe- er is Patron of them, 4. *M.* 1. B. *Pre- ntation* 61.

See 4 M. 1 Tit. com miſſions 41. E. 3. 5. accord See 11 H 4. 37. con tra by Hill.

Priviledge.

Note, when a Record is removed out f a Court of Record, as *London*, &c. to the Kings Bench, or into Common ench, there they ſhall not proceed up- n the Original which was in *London*: t in the Kings Bench the party may d himſelf by Bill of *Midd.* brought ere againſt the party upon his appear- ce: and in the Common Bench to ing an Original retornable the ſame y. 36. H. 8. B. *priviledge* 48.

Pro-

Procedendo.

If a man arrested in a *Franchise*, sue a Writ of Priviledge and removes the body and the cause, and after come not to prove his cause of Priviledge, the Plaintiff in the Franchise may have *Procedendo*. And therefore B. seem that there the first sureties remain: o therwise if it had been dismissed by a lowance of the priviledge, for then h Sureties are discharged. Yet it seem to him, that when they remove the bo dy and the cause, they remove no sure ties: but then there is not any Recor against them; and then it seems tha the priviledge being allowed, the sure ties are discharged. Otherwise whe the priviledge is not allowed; for the the Prisoner and the cause was alwai remaining in the custodie of those of th Franchise. 31. *H.* 8. *B. Procedendo* 1 *Sureties* 28.

See 32 H 8. Tit. Main-prize contra.

Proclamation.

Note, that none can make Proclama tion but by authority of the King, Majors and the like, who have priv ledg

ledge in Cities and Boroughs to do it, or have uſed it by cuſtom. And Sir *Edmund Knightly*, Executor to Sir *William Spencer*, made Proclamation in certain market Towns, That the Creditors ſhould come by a certain day, and claim and prove their Debts, &c. due by the Teſtator; and becauſe that he did it without authority, he was committed to the Fleet, and put to a Fine, 22. H. 8. *B. Proclam.* 10.

Prohibition.

Tis agreed, That if a man be ſued in the Spiritual Court, for Tythes of ſeaſonable wood, the partie grieved may make a ſuggeſtion in Chancerie, or in the Kings Bench, that he is ſued in the Spiritual Court for Tythes of great Trees, which paſs the age of 20. years, by the name of *Sylva Cedua*, which is ſeaſonable wood uſed to be cut, where indeed tis great Trees, and pray a Prohibition, and have it. And the ſame Law where a man is ſued in *curia Admiral'* for a thing done upon the ſea, where indeed twas done upon the land, there upon a ſurmiſe that it was done upon the land, he ſhall have a prohibition. 31. *H.* 8. *B. Prohibition* 17. Fitz. accord 43. H.

'Twas agreed by the Juſtices, That if a Frenchman inhabit in England; and after War is proclaimed betwixt England and France, none may take his goods, becauſe that he was here before: but if a Frenchman comes here after the War proclaimed, be it by his own good will, or by Tempeſt; or if he yeilds and renders himſelf, or ſtands to his defence, every one may arreſt him, and take his goods: and by this he hath a propertie in them, and the King ſhall not have them: and ſo twas put in ure the ſame year, betwixt the Engliſh and Scotch; and the King himſelf bought divers priſoners and goods the ſame year when *Bullen* was conquered of his proper ſubjects. 36. *H.* 8, *B. Proprietie* and *proprietate probanda* 38, the end.

Who ſhall have property in an eſtray. See Tit. *Eſtray*.

Quare

Quare Impedit.

BY *Whorewood* the King's Attorney, clearly; If two joynt Tenants are, the one presents sole, and his Clerk inducted, the other is out of possession, 8.H.8.B. *quare imped.* 52. the end.

Quare imped. by *Mark Ogle*, against *Harrison*, Clerk incumbent; who was in the presentation of the *King*: and therefore the Writ was brought against him sole: and pending the Writ of *quare imped.* the Plaintiff dyed after the 6 months past, who had but *prox. presentationem* by grant, his executors brought another *quare imped.* by journies accounts, intending to have saved the matter by the journies. And the Justices of the Common Bench, where the Plaintiff dies, the Executors shall not have a Writ by journies accounts. (and B. seems that where the

Contra P 36 H.8. B. Quare imped. 2. the end. by Bromley and Hales Serjeants See Coke upon Lit

14 H.8. 3. by Fitz James.

See Coke Rep case of Journies accounts.

plaintiff dies, none can have another writ by journies accounts. But *contra* in some cases where the Defendant dies having the writ. (*B. Journeies accounts* 23: *Quare imped.* 58.) And note by B. where the Grantee *de prox. presentati one* brings a *Quare impedit* as before and dies, after the six moneths past pending the Writ, and the Executors bring another *Quare imped.* by *Journies* accounts, and take a General Writ, and count how that the grant was made to the Testator, and he brought a *Quare imped.* and dyed, and that they brough this Writ, and for that reason *pertine ad ipsos presentare*, and the Defendan *ipsos impedit*, and then this imports tha this is of a disturbance made to them selvs after the 6 months past, & the nth Writ lies not; for all ought to hav been compriſed in the Writ, and cou specially and demand a writ to the B shop upon the presentation, and wr of the Testator, *& quia non ideo mal* and nothing thereof comes in the ca aforesaid, betwixt *Mark Ogle*, a *Harriſton*, by *B.* 4. *E.* 6. B. *Quare i ped* 160.

Que eſtate, whoſe eſtate &c.

Tis ſaid for Law, That if a man recovers land againſt I: S· or diſſeiſes I. S, he may plead that he hath his eſtate, and yet he is in in the *Poſt*, 31. *H*:8.B:*que eſtate* 48. 39 H.6. 24. by Nedham

· *Que eſtate* in another perſon of the the Tenancy without ſhewing how, not ſo in Seigniory. See Tit *Avowrie*.

Twas agreed that a *Que eſtate* ſhall not be allowed in one who is mean in the conveyance; as to ſay that *A*. was ſeiſed in Fee, and Feoffed *B*. whoſe eſtate *C*. hath, who Infeoffed the Defendant; for the *que eſtate* ſhall be allowed onely in the Defendant or Tenant himſelf, *S*. whoſe eſtate the Tenant hath, 1. *E.6. B. Que eſtate* 49. H 2. E.6. in banco regis accord. 37. H.6. 32. by Davers.

Note that twas agreed by the Juſtices, That a man cannot convey an interest by a *Que eſtate*, of a particular Eſtate, as Tail for life or for years, without ſhewing how he hath this eſtate, be it of the part of the Plaintiff, or Defendant, 7. *E. 6. B. que eſtate* 31.

Twas agreed in the Exchequer, That Cities & Boroughs ſhall pay at Tenths, and Uplands at Fifteens, 34. H. 8.B. *quinziſme, &c.*8.

Note by Expoſition of thoſe of the Exchequer, That Tax and Tallage is no other but Tenth, Fifteen, or other Subſidie granted by Parliament. And the Fifteen is of the Layitie, and the Tenth is of the Clergy, and is to be Levyed of their Land. And the Tenth and the Fifteen of the Layity, is of their goods: S. *decimam partem bonorum in Civitatibus & Burg. Et quinſeſimam partem bonorum* of the Layity in *patria*, which was Levyed in ancient time upon their goods: S. of the beaſts upon their lands, which was very troubleſom. But now tis levyed *Secundum rat. terrarum ſuarum* by verges of Land, & other quantities; ſo that now all know their certainty in every Town and Countrey throughout the Realm. But tis yet Levyed in ſome places upon their goods: but in moſt places upon their Lands, which was granted by the Barons. 34. H. 8. B. *quinziſme* 9.

Que

Twas said for Law, that a man shall not wage his Law in a *quo minus*, 35. H. 8. B. *Ley.* 102. *quo minus* 5. the ends. 8 H. 5. Fitz. Ley. 66.

Rationabile Parte, &c.

TWas said for Law, That the Writ *de Rationabili parte bonorum* is by the Common Law; and that it hath been often put in ure, as a Common Law, and never demurred to: there fore *B.* seems that tis the Common Law, 31. H. 8, 2. *Rationabili parte* 6. the end. F. N. B. 122. L. Magna Chart. ca. 18. Rast. det. to the King 2.

Recognizance.

Agreed for clear Law in the Chancery; if a man acknowledge a Statute staple, and after infeoffs the Recognisee, & he makes a Feoffment over, now See 36. H 8. Tit. Stat. marchant.

the Land is discharged; for the Feoffee
5 H. 7. 25 by Town send. is but a stranger. But if the Cognisor repurchases the Land, it shall be put in Execution, and yet twas once discharged, *Time E.* 6. B. *Recognizance* 9. the end.

Note, that it did appear by search of the Records of the Common Bench, that the Justices of the Bench may take and Record Recognizance, as well out of Term, as within Term; and as well in any County of *England*, as at *Westminster*, 4. *M.* 1. B. *Recognizance* 20.

Lecture 8. Note, That the King himself cannot take a Recognizance; for he cannot be Judge himself, but ought to have a Judge under him to take it. And none can take a Recognizance, but a Justice of Record, or by Commission: as the Justices of the two Benches, Justice of Peace, and the like: for a Conservator of the Peace, which is by the custom of the Realm, cannot take surety of the Peace by Recognizance, but by obligation; the same Law of a Constable, *Lecture* B. *Recognizance* 14.

Record.

A man ſhall not plead a Record, except it be in the ſame Court where the Record remains; without ſhewing the Record exemplified *ſub magno ſigillo Angliæ*, if it be denied: for it ought to come into the Chancery by *Certiorare*, and there to be exemplified *ſub magno ſigillo*; for if it be exemplified *ſub ſigillo de communi banco, Scaccario*, or the like, theſe are but evidence to a Jury. 22. *H.* 8. *B. Record.* 65. 19 E. 4 9 See 21 H. 7. 9. See 11. H. 7. 2. by Fairfax.

'Tis ſaid that he that pleads a recovery in a writ of right in a court baron in barre of an Aſſiſe before the Juſtice of Aſſiſe, he ought to ſhew it exemplified *ſub ſigillo cancell.* otherwiſe 'tis no plea. But of a Record in the common bench, he may vouch it there, and have day to bring it in; the ſame law by *B.* of any other court of Record, Yet otherwiſe in a court baron, for there 'tis a recovery, but no Record, for 'tis not a court of Record. *Time. H.* 8. *B. Record.* 66. *the end.*

Note that in the Kings bench they have divers preſidents, that in a writ of error upon a fine, the Record it ſelf ſhall be certified, ſo that no *plures* 1. H. 7. 20. Contra. Com. 265.

pro-

proclam. ſhall be made, for if nothing be removed but a Tranſcript, they may proceed in the common-bench notwithſtanding that, and if it be reverſed, this makes an end of all: but if it be affirmed, then the Record ſhall be ſent into the common-bench by *Mittimus* to be proclaimed and ingroſſed 4. *M.* 1. *B. Record.* 49.

44. E. 3. 37. by Knivet.

Recovery in value.

See 25. H. 8. after. Recovery againſt husband and wife by writ of entry in the Poſt where the wife is tenant in taile, and they vouch over, and ſo the demandant recovers againſt the husband and wife, and they over in value, this ſhall bind the taile and the heir of the wife. 23. *H.* 8. *B. Recovery in value.* 27.

See 24. H. 8. Tit. Entre conge-able. Where a writ of entry in the Poſt is againſt tenant for terme of life to bind the fee ſimple, he ought to pray in aide of him in reverſion, and then they to vouch upon the joynder, *&c.* And ſuch recovery with voucher is uſed for to docke the taile in ancient demeſne upon a writ of right, and voucher over; and this of freehold there. Yet *B.* doubts of ſuch recovery upon a plaint there of land of baſe tenure, for this cannot be

war

warranted, *Ideo quære.* 23. *H.* 8. *B. Recovery in value* 27. *the middle.*

Note, that t'was taken, if my tenant for life vouches a ſtranger, who enters into the warranty, and cannot barre the demandant, by which the demandant recovers, and the tenant over in value, that this land recovered in value ſhall not go to me in reverſion after the death of the tenant for life, nor the reverſion of the land recovered in value, ſhall not be in me in the life of tenant for life, and ſo 'tis holden at this day. 25. *H.* 8. *B. Recovery in value.* 33. See. 27. *H.* 8. after. 5. *E.* 4. 2. contra. by Haydon. See 25. *H.* 8 after

Note, by ſome, where a writ of entry in the Poſt is brought againſt a huſband and wife, where the wife is tenant in taile, and they vouch overe and ſo the demandant recovers againſt the huſband and wife, and they over in value; if the wife tenant in taile dyes, and the husband ſurvives, this ſhall not bind the iſſue in taile, for the recompence ſhall go to the ſurvivor, and then it ſhall not bind the iſſue in taile. Yet *B.* ſeems that this opinion is not law, for the recompence ſhall go, as the firſt land which See 23 *H.* 8. before. See 25 *H.* 8. before.

which was recovered ſhould go. And voucher by husband and wife ſhall be intended for the intereſt of the wife. 25. *H.* 8. *B. Recovery in value.* 27. *the end.*

See 25. H. 8. before. Tenant for life, the remainder over, or tenant in taile the remainder over, is impleaded by a writ of entry in the Poſt, and he vouches a ſtranger, the demandant recovers againſt the tenant, and the tenant over in value, this ſhall bind him in remainder by *Monntague Juſt.* and others, for the recompence ſhall go to him in remainder. But yet in the caſe of the Lord *Zouch* and *Stowell* in the Chancery, the law was determined otherwiſe by all the Juſtices. *B.* ſeems the reaſon, becauſe that when he vouches a ſtranger, the recompence ſhall not go to him in remainder; contrary, if he vouches the donor or his heir who is privy. But after this day many put in ure to bind the remainder. 27. *H.* 8. *B. Recovery in value.* 28.

N.B. 148

Recovery againſt Feoffees ſeiſed to uſe in tailes. See *Tit Feoffements to uſes.*

'Tis held, that where tenant for life is, the remainder over in tail, or for life and the tenant for life is impleaded, and vouches him in remainder who vouches over

over one who hath title of Formedon, and ſo the recovery paſſes by voucher, there the iſſue of him who hath title of *Formedon* may bring his *Formedon*, and recover againſt the tenant for life, for the recompence ſuppoſed ſhall not go to the tenant for life, and therefore he may recover; for his anceſtor warranted but the remainder, and not the eſtate for terme of life, and therefore the tenant for life cannot bind him by the recovery, for he did not warrant to him. And therefore in ſuch caſe the ſure way is to make the tenant for life to pray in aide of him in remainder, and they to joyn and vouch him who hath title of *Formedon*, and ſo to paſſe the recovery, for there the recompence ſhall go to both. 30. *H.* 8. *B. Recovery in value.* 30.

See 24. H.8. Tit. Entre. congeable.

'Twas agreed that if tenant in taile the reverſion to the King, ſuffers a recovery, this ſhall bind him and his iſſue, but not the King by the common law. See now the Statute of thereof that it ſhall not bind the iſſue. 33. *H.* 8. *B. Recovery in value.* 31. *Taile.* 41. *the end.*

See 22. H.8. Tit. Diſcontinuance depoſſeſſion.

Relation.

Where an office found for the King ſhall relate, where not. See *Tit. Intruſion.*

Of the Relation of an Act of Parliament. See *Tit. Parliament.*

Note, that the attainder of Treaſon by Act of Parliament, ſhall not have elder relation then to the firſt day of the Parliament, except it be by ſpeciall words that he ſhall forfeit his lands that he had ſuch a day and after. 35. *H.* 8. *B. Relation.* 43.

30. H. 6. 5. Perk. 6 C. St. 192 A. 'Tis held for good Law, that by attainder of felony by verdict, a man ſhall forfeit all his lands that he had the day of his felony done or ever after, for this ſhall have relation to the Act, *contra* upon an attainder by out lawry;

30. H. 6. 5 & St. 192 A. Contra, Perk. 6. B. See Coke upon Lit. For *B.* ſeems there that he ſhall not forfeit but thoſe which he had, the time of the outlawry pronounced, or after, for outlawry hath not relation, as a verdict hath. *Time. H.* 8. B. *Relation.* 42. *the end.*

Relation of an Inrolment: See *Tit. Faitz inrol.*

Releaſes.

Husband and wife purchaſe in fee, and after they leaſe for years by Indenture, and after the husband releaſes to the leſſee and his heirs, this is no diſcontinuance, and yet this gives a freehold to the leſſee during the life of the huſband; *Per plures*, without doubt. 29. *H.* 8. B. *Releaſes.* 81.

G. Chancery was poſſeſſed of an Indenture, and loſt it, and *I. S.* found it, to whom the ſaid *G. C.* releaſed all actions and demands, and after the ſaid *I. S.* gave the ſame Indentrue to *John Tiſon*, and after the ſaid *G. C.* brought an action of detinue againſt the ſaid *J. T.* who pleaded that the ſaid *J. S.* found the Indenture, and that the ſaid *G. C.* releaſed to the ſaid *J. S.* all actions and demandes, and after the ſaid *J. S.* gave the ſaid Indenture to the ſaid *J. T.* Judgment if action. And t'was agreed in the common Bench, the caſe being of land demanded *ibidem*, that this is a good barre, and that the releaſe of all demandes ſhall exclude the party of ſeiſure of the thing and of his entry into the land, and of the

See Lit. Sect. 508 509 accord.

6. H. 7. 15

the property of the chattell which he had before. And it was moved in the Kings bench, and they were of the same opinion, and said that the reason is, because that entry in land, and seisure of goods are demandes in Law. 34. *H.* 8. B. *Releases.* 90.

Relief, See Tit. Debt,
Remainder: See Tit. Discent:
Remitter.

No Remitter against an Act of Parliament. See *Tit. Parliament.*

See 29. H.8. Tit. Parliament. 2. M. 1. Com. 114. See Dier.

Note a *Per curiam*, if Tenant in Taile makes a Feoffement to his use in Fee before the statute of uses made, 27. *H.* 8. and dyes before the said Statute, his heir within age, and after the Statute is made before the full age of the heir, by which the heir is in possession by the Statute, he shall not be remitted by it. Contrary of a discent after the Satute for this shall be a remitter. 34. *H.* 8. B. *Remitter:* 49.

See Cok upon Lit.

If a man hath a Tittle of entry, and not a right of entry, as by escheat mortmaine, assent by a woman to a ravishor and the like, and takes an estate of the terretenant, he shall not be remited for he hath but a Tittle. (And a man cannot be remitted, but in respect o

a right before, as where a man is diſſeiſed and takes an eſtate of the diſſeiſor, he is remitted, for he had a right of entry before.) And the ſame Law where a man decaies his Tenements, or converts Land from tillage into paſture againſt the Statute, and makes an eſtate for life to his Lord, he ſhall have no other eſtate: for he had but a Title of entry, and not a right of entry. *Quære*, for *Non adjudicatur*. 34. *H.* 8. B. *remitter* 50. 4 H. 7. ca. 19.

Where a Deviſe ſhall take away a diſcent, and will not remit: See Tit. Deviſe.

Repleder.

Twas in uſe in the Kings bench, though that the Jury be ready to paſs there, if there be a Jeofail aparent in the Record, the Inqueſt ſhall be diſcharged, 35. H. 8. B. *repleder* 54. P. 7. E. 4. 1 acccord

Reſcous, See Tit. Diſtreſs.

Reſervations.

If a man Leaſes his mannor except the wood, and underwood, by this the ſoile of the wood is excepted by *Baldwine*, 46. E. 3. 22. Fank, accord.

See 14 H 8. b/ Brudnel. *wine* Chief Justice of the Common-Bench: *Fitz.* Justice, and *Knightly*, and *Mart* Serjeants: contrary, *Spilman*, and *W. Conigs'* Just. 33. H. 8. B. *Reservations* 39.

Restitution.

See 32 H 8. Tit. Denizen & Coke upon Lit. A man is attainted of Treason, the King may restore the Heir to the Land by his Patent of Grant, but he cannot make the heir to be heir of blood, nor to be restored to it without Parliament: for this is in prejudice of others, 3. E. 6. B. *Restitution* 37.

Restore al primer action.
Restored to the first action.

See Tit. Judgement. See Coke upon Lit. If a man enters where his entry is not lawful, as the heir in Tail after discontinuance, or the heir of a Woman, or the Woman her self after discontinuance, & the other upon whom he enters recovers against him, there they, S. the heir in Tail, or the woman, or her heir, is restor'd to their first action of *Formedon*, or, *Cui in vita*. Yet, if such who enters where his entry is not lawfull, makes a Feoffment, and the other upon whom he

he entered, recovers: now the first action is not restored to the issue in Tail, nor to the Woman, nor to her heir, by reason of the Feoffment, which extincts right and action. But if he which so enters, makes a Feoffment upon condition, and for the condition broken, re-enters before that he upon whom he entered hath recovered: and then he recovers after the re-entry made by the condition, there he which made the Feoffment upon Condition, is restored to his first action: for the entry by the Condition, extincts his Feoffment, 23. *H.* 8. B. *Restore al primer action* 5. 9. H7. 25 Fineaux accord. & Thor. 41 E. 3. 18.

Retorne de avers.
Retorn of beasts.

Note by the opinion of the Court, That if a man be nonsuited in a Replevin, and a retorn is awarded: and the Plaintiff brings a Writ of second deliverance, and suffers it to be discontinued, retorn irreplegible shall be awarded, as well as if the Plaintiff had been *non suited* in the Writ of second deliverance, 17. H. 8. B. *Retorne de avers* 37. *Second deliverance* 15. 19. H. 8. 11. 6. & 7 E. 6. com. 82.

Revivings. See Tit. Extinguishments.

Riot. Rout, and unlawful Assembly.

Note, that Riot is where three or more do an unlawfull act in Deed, and execute it, as to beat a man, enter upon possession, or the like: unlawfull Assemblie is, where a man assembles people to do an unlawful act, and doth not do it, nor execute it in deed. And Rout is, where many assemble themselves for their own quarrel; this is a Rout, and against law, though it be not executed: as inhabitants of a Town for to break down a hedge, wall, or the like, to have Common there or to beat a man who hath done to them Common displeasure, or the like, *Lecture* B *Riots* 5.

Sanctuarie

Sanctuary.

See Tit. Corone.

Saver default, Saving default.
See Tit. Judgement.

Scire facias.

Of a thing Executory; a man ſhall have Execution for ever by *ſcire facias*, See Tit. *Execution.*

Where Debt lies, and where a *ſcire facias.* See Tit. *Debt.*

Where a *ſcire facias* upon a Recogniſance ſhall be brought? See Tit. *Lieu'*

Second Deliverance. See Tit.
Retorn de avers.

13.H.7. 15 If a man holds of the King, and holds other Land of another Lord, and dies, his heirs within age, who intrudes at his full age, and pays the rent to the other Lord, this is a good Seisin, and shall bind him after he hath sued livery: for the Seigniory was not suspended by the possession of the King, but onely the distress: for after Livery, the other Lord may distrain for the arrearages due before, *per optim. opinionem tunc.* See now the Statute thereof, That the officers of the King shall render yearly the rent to the Lord, and the heir shall not be charged with it by distress after upon livery sued, as he was at Common Law, 34. *H.8. B. Seisin*, 48.

33.H.6. 35. by Davers. St.9. 26.H.8. 8. by Norw. 2 & 3.E. 6 ca.8.

Several precipe.

11.H.6. Twas agreed that a man may have Debt and Detinue by one and the same Writ by several Precipe, the one shall be *Debet*, the other *Detinet*, *Tim. H.8. B. several precipe* 5. the end.

Several

Several Tenancie.

In an Aſſiſe, ſeveral Tenancy is no plea: and the ſame Law in other actions here no land is demanded in certain, 24.H.8.B. *ſeveral Tenancy* 18. 30 Aſs. 14.

Statute Merchant.

Twas ſaid for Law, That if a man ſues Execution upon a Statute Merchant, or Statute ſtaple, and part of the Land is extended *nomine omnium terrarum*, which is retorned acccording, and the party accepts it, he ſhall never have an Extent, nor re-extent of the reſt.

And that upon a *Nihil* retorned upon a *Teſtatum eſt*, he may have Proces in another County: for there the judgement ſhal be *quod habeat execntionem de terris quouſque ſumma Levitur.* 26H.8.7 by Fitz. ſee 33H. 8. after.

Yet B. ſeems otherwiſe of ſuch retorn of Goods, 29.H.8.B. *Statute Merchant.* 40:

Note if a Statute ſtaple be extended, and ſo remains by ſeven years without *Deliberate* made, yet he may have a *Deliberate* at the end of 7. years, but

he who hath the land delivered to him by liberate upon a Statute cannot make a ſurrender conditional to the conuſor, & enter for the condition broken, after the time of the extent incurred; as land of 10*l.per an.* is delivered in execution for 40*l.* this may incurre in 4. years, there the Conuſee by ſuch condition, cannot enter after the four years incurred, for he ought to take the profits upon his Extent preſently. And he ſhal not hold over his time *niſi in ſpeciali caſu*, as where the Land is ſurrounded with water, ſudden tempeſt, or the like. And the judgement ſhall be *Quod teneat terram ut liberum tenementum ſuum quouſque denarii leventur*, 33. H. 8. *B. Statute Merchant.* 41.

15 E. 4. 5 Brian accord. 7 H. 7. 12. accord. by the Re. Reporter See 29 H 8. before 4 E. 6. Com. 61

Tis ſaid for Law, That if the Conuſor upon a Statute Staple hath a Reverſion, and grants it over, and after the Tenant for life dies, this Land ſhall not be put in execution: for the Reverſion was never extendable in the hands of the Conuſor, 33. *H.* 8. *B. ſtatute Merchant.* 44. the end.

* 45 E. 3. 22. by Finch. 13 H. 7. 22. by Keble: ſee Time E. 6. Tit. Recogniſance.

Note, by * *Bromley*, *Hales*, and *Portman* Juſtices, and *Rich*, who was firſt Chancellor of *England*, & *Apprenticius*

ius Curiam That if the Conusee purhases parcel of the Land after the Statute acknowledged or Recognised, this no discharge of the Statute against the Conusor himself. But the Feoffees of he Conusor of other Parcels, shall be hereof discharged. But if the Conusee ath the Land delivered in Execution, nd purchases parcel of the land of the Conusor, this is a discharge of the ire Statute. 36. *H.* 8. *B. Statute Mer hant.* 42. 11 H.7. 4,5.E.6. com.72.

Twas said for Law, that if the Cousee upon a Statute staple dies, and is executors sue execution in the name f the Testator, as if he were in life, nd the Sheriff takes the body in the ame of the Testator, *&c.* yet this is ot execution for the executors, but hey may after have execution in their wn name; for the first execution in he name of him that was dead before he Teste of the Writ, was void, and he body cannot remain to satisfie him ho was dead before. Nor the Sheiff cannot deliver the land nor goods o him who is dead, *juxta formam bre is:* And by *B.* in the book of Enries, the executors of the Conusee hall have execution upon a Statute Liber intrac. fo.

Merchant,

Merchant, without *Scire Facias*, and this upon surmise as it seems to him. And if the Conusor be retorned dead, yet execution shall proceed of his Lands and Tenements without *Scire Fac* against his heir: And the extent and Liberate shall be served imediatly. Yet by *B.* no remedy appears there for the goods of the Conusor when the conusor is dead, to have any execution of them. 36. *H.* 8. B. *Statute Merchant.* 43:

Tis said if a Writ of execution with *extendi facias* issues upon a Statute Merchant, that the Writ ought to be retorned, and the land upon this delivered to the Conusee by *Liberate inde. Time H.* 8. B. *Statute Merchant.* 32. the end.

Supercedias

Supercedias.

'Twas holden for Law, that a writ of attaint a man ſhall not have a Supercedias for to diſturb execution; for the verdict ſhall be intended true 5 H7.22 4 E.6. Com.49 4.E.6. Com.49. till tis reverſed, &c. And that the Regiſter which gives Supercedias there, is not Law. Contrary upon a Writ of Error; for it may be intended that Error is for the ſuit of the Defendant, *&c.* 33. *H. B. Supercedias.* 24.

Sureties.

Where Sureties in *London* ſhall remain after the action removed? *& ècontra.* See *Tit. Proceedendo.*

Affirmatur pro lege, that Suretie of the Peace is diſcharged by the death of 1.H.7.1. & 1.H3 3.

of the King, for tis to obſerve t
peace of that King, and when h
dead, tis not his peace. 1. *M.* 1.
Surety. 20.

Surrender.

Tenant for term of life ſurrenders
him in reverſion out of the land
14 H. 8. 21. Br. accord. which he agrees, the free hold by th
is in him preſently, and he is Tena
to the action by *precipe quod redd*
without entry, but he ſhall not ha
Treſpaſs without Entry. 31. *H.* 8.
Surrender. 50.

Where tail ſhall be extinct by ſu
render of Letters Patents, where no
ſee *Tit Patents.*

Note in the Caſe of *Culpeper* tw
ſaid that the King himſelf cannot r
cord, or receive a ſurrender of land
Letters Patents, made to him *extr*
curiam, but this ought to be befo
his Chancellor or other Juſtice to th
authorized. 2. *E.* 6. B. *Surrender.* 53. th
end.

See Coke upon Litt. If a man leaſes for years, the remai
der over for years, and after the fir
Termor grants his intereſt to the Le
for, this is no ſurrender by reaſon o
th

e mean intereſt of the term in re-
inder. And a Termor makes his
ſſor his Executor and dies, this is no
rrender, for he hath this to another
e, *contra Whorewood inde.* 2. *E.*6. B.
rrender 52.

See 4. E. 6. Tit. Extinguiſhment.

Note, where a man leaſes land for
rm of years, the remainder over for
e, the remainder over in fee, or re-
rving the reverſion, there he in re-
ainder for term of life, may ſurren-
er to him in reverſion, or to him in
mainder in Fee, and the eſtate for
rm of years is no impediment, for
ough it cannot give the poſſeſſion of
e land, yet it gives the poſſeſſion of
e free hold which is in the thing
hich was ſurrendred. 3. *M.* 1. B. *Sur-*
nder, 55.

Perk. 115. H. See *Coke* upon Lit.

Suitor.

Twas ſaid for Law in the Star-
hamber, betwixt *Brown* Juſtice, and
ion Grocer of *London*, that a Court
aron may be holden before two ſui-
ors, for the plurall number ſuffices:
ime: *H.* 8. B. *Suit.* 17.

See Tit. Court Baron, & Manor.

Tail:

Tail.

RECovery upon voucher againſt Tenant in tail, is a bar by reaſon of the recompence in value. And a recovery by writ of entry in the poſt by ſingle voucher doth give but the eſtate which the tenant in tail hath in poſſeſſion *tempore recuperationis*, ſo that if it were in other eſtate then the tail, there the tail is not bound againſt the heir. But the double voucher is to make the tenant in tail to diſcontinue, and to bring the writ of entry againſt the feoffee, and then the feoffee ſhall vouch the tenant in tail, and he ſhal vouch over, and ſo ſhal loſe; and this ſhal binde all intereſts and tails that the vouchee had. 23. *H* 8. *B. Tail* 32.

Lit. 160. N.B. 143. 13. H. 7. 24. by Townes. 10. H. 7. 8. Vavi. for accord. 2. M. 1. com 110.

Tenant in tail hath iſſue and aliens with warranty, and leaves aſſets, & dies, the iſſue cannot recover by *Formedon*, for the warranty and aſſets is a barr. And if the iſſue aliens the aſſets, yet he ſhall not have a *Formedon*. But if he hath iſſue and dies, there the iſſue of the iſſue ſhal have a *Formedon*, becauſe that the aſſets is not diſcended to him. Yet

tis

s said that if the iſſue upon whom the warranty and aſſets diſcended brings a *Formedon* and is barred by judgement, ndaliens the aſſets and dies, his iſſue hall not have a *Formedon*, becauſe that is father was barred by judgement. *B. Tail* 33. And if the tenant in tail hath iſſue two ſons, by divers venters, and iſcontinues, and dies; and an *anceſtor collateral* of the eldeſt ſon releaſes with warranty, and dies without iſſue, and he eldeſt ſon dies without iſſue, before ny *Formedon* brought, the younger on may recover by *Formedon*; for he is ot heir to the warrantor, and his bro- her was not barred by judgement. Yet B. doubts thereof; for it ſeems to him hat the diſcent of the *Collateral* war- anty extincts the tail, But if the eldeſt had been barred by judgement, then learly the younger is gon alſo. 24. *H.* 8 B. *Tail* 33. *Formedon* 18.

N.B. 144. & 48. E. 3. 9 by Finch. contra.

See Time H 8. Tit. Formedon.

Tenant in tail, the reverſion to the King, ſuffers a recovery *quid operatur* by it. See *Tit. Diſcontinuance de poſſeſſion & Recovery in value.*

If the King gives lands in tail by his Letters Patents, and after the donee ſurrenders his letters patents to the K.

See 32. H. 8. Tit. Patents.

the

the Tail by this is not extinct. 35. *H.* 8 *B. Tail* 38.

The King Tenant in Tail cannot discontinue by grant by Patent. See *Tit. Discontinuance de Poſſeſſion.*

Tenant at Will.

See 22. E 4. 38. by Huſſey.

Note for Law, that there is no Tenant by ſufferance, but he that firſt enters by authority and lawfully, as where a man leaſes for years, or for term of anothers life, and holds over his term after the term expired, or after the death of *ceſtuy que vie*. And Tenant at will is, where a man leaſes his land to another at will; for he who enters of his own head is a Diſſeiſor. *Time H.* 8. B. *Tenant per copy*: 15. the end.

Tenant by Copy.

M. 26. H 8. accord in Eſſex, & Fitzh. in the Dutchy Chamber. Lit. 16. 4. El. com. 233. Weſtm. 2. cap. 1. Raſt. Tail 1. See Coke upon Lit. & the 3. Rep.

Note, that twas ſaid for Law, that Tail may be of a Copyhold, and that a *Formedon* may ly of it in *Diſcender* by Proteſtation, in nature of a Writ of *Formedon* in *Diſcender* at common Law, and good by all the Juſtices, for though that a *Formedon* in *Diſcender* was not given but by Statute; yet now this Writ lies at common Law and

and it ſhall be intended that this hath been a cuſtome there *de tempore, &c.* and the Demandant ſhall recover by advise of all the Juſtices, 15 *H:* 8. *B: Tenant per Copy* 24.

Where a Stuard, or under-ſtuard may let by Copy, *& e contra*, See *Tit: Court baron.*

Note, that if a man leaſes a Mannor for yeeres, in which are Copy-holds, and after a Copyholder dies, the termer of the Mannor grants the land by Copy for three lives, this is good; for the cuſtome through all *England* is, that the Lord, for the time being, may demiſe by Copy, &c. and this notwithſtanding that hee is but *durante bene placit.* or at Will. And 'tis held that ſuch Tenant of a Mannor cannot demiſe, reſerving leſſe rent then the ancient rent, but he ought to reſerve the ancient rent, or more, *quære of that. Tenant by ſufferance, ſee Tit: Tenant at Will.* See Cook upon Lit, and his Rep.

Tender.

'Tis ſaid for Law, that upon a Leaſe for yeers, rendring rent with re-entry the Leſſee ought to bee ready all the See 4 M. 1. contra. after.

Cooke upon Lit. & Cluns case in his Rep

day and make attendance to offer it; and it suffices for the Lessor to come any time of the day, yet the entry is, that the one and the other attended the intire day, *quære inde 36 H: 8. B : Conditions*, 192. *the end*, *Entre Congeable*, 2. *the end.*

4 M. 1. Com 172. 36 H. 8. before cont. 6 H 7. 3 see Cooks 10 booke, Cluns case

Note that 'twas agreed in the Serjeants Case, that where a man leases Land for yeeres, rendring rent, and for default of payment a re-entry, it suffices for the Lessee to tender the rent upon the Land, the last houre of the last day of the Moneth, if the money may bee told in that time : And so it sufficeth for the Lessor to demand it the same houre, 4 *M:* 1. *B : Tender*, 41.

If a man Leases for yeeres rendring rent at *Michaelmasse*, and other Covenants, if hee bee bound in an obligation to pay the rent precisely, there hee shall seeke the Lessor, but if hee be bound to perform the Covenants, &c. The tender upon the land sufficeth, for there the payment is of the nature of the Rent reserved, *Contrary* in the first Case, 6 *E:* 6. *B: Tender*, 20.

Tenures.

What ſhall bee a Tenure, and what a Condition, ſee *Tit. Conditions.*

What ſhall bee a Tenure *in Capite* of the King, what not, ſee *Tit. Liverie.*

A man makes a Feoffment of the moytie of his Land, the Leſſee ſhall hold of the Lord by the intyre ſervices which the intire Land was holden before, for the Statute of *Quia emptores terrarum, tenend. pro particula,* holds not place here; for a moytie is not *particula*: the ſame Lawe of a third part, and the like, which goes by the halfe and the whole; contrary of an acre or of two acres in certain: And if a man holds two acres by a hauke, and makes a Feoffment in Fee of one acre; the Feoffee ſhall hold it by a hauke, and the Feoffor ſhall hold the acre by another hauke, 29 *H:* 8. *B: Tenures* 64. Perk. 129 D. Weſtm. 3. ca. 2. Raſt. Tenure 4. Fitz. 235. A. 22, E. 4. 36. by Catesby.

Reſtitution by Parliament revives a Seigniory or Tenure which was extinct by attainder of Treaſon, by Parliament, *See Tit. Extinguiſhment.* See Tit. Livery.

See in the Exchequer 3 *E:* 3. *Ro:* 2.

'twas found that a man held of the King in Knight ſervice *in capite, ut de honore ſuo de Rayleghe*, and 'twas taken no tenure *in capite*, but a tenure of the honour; and therefore his heir ſhall have *ouſter Omaine* of his other Lands, which ſhould not be if it had been *in capite*, for then the King ſhall have all in Ward by his Prerogative: yet otherwiſe 'tis if the Honour be annexed to the Crown; for then the Honour is *in capite*. And 11 *H:* 7. the Honour of *Rayleghe* was annexed to the Crown; therefore now 'tis *in capite*. And where the King gives Land to hold of him by fealty, and 2 *d. pro omnibus ſervitiis*, this is Socage *in capite*, for 'tis of the perſon of the King, otherwiſe if it were to hold *ut de manerio de R.* 33 *H:* 8. *B: Tenures* 94.

11 H. 7. 18 by Rede.

'Tis held, that if a man made a Feoffment of land before the Stat: of *Quia emptores terrarum* to hold of him, and to make ſuit to his Court; this is good if he hath a Court. But a man cannot commence a Court by tenure made, where he had not a Mannor before; for there the ſervices ſhould be holden of his perſon (*B: Tenures* 34.)

Weſtm. 2. ca. 2. Raſt Tenure 4

34.) And a man cannot make a Mannor at this day, though that he gives Land in tayl to hold of him, and by ſuit of his Court; for he cannot make a Court; for a Court cannot be but by continuance. And ſo a Man may make a tenure, but no Mannor nor Court; for a Mannor and Court cannot be but by uſage had *de tempore cujus contrarium memoria hominum non exiſtit.* See 33 H. 8 Tit. Mannor.

Teſtament.

Teſtament by a *Feme* Covert of the aſſent of the husband, See *Tit: Deviſe.*

A man deviſes his Land to *J S*; this ſhall be taken but for term of his life; but if he ſaith paying a 100.l. to *W N* this ſhall be intended a Fee-ſimple: and if he doth not pay it in his life, yet if his Heir or Executor pay it, that ſuffiſes; *Quære* of his Aſſignee, 29 *H:* 8. *B: Teſtament:* 18. 22 E.3.16 B. Deviſe. 33. See 4 E. 6. Tit. Eſtates. See 24 H. 8. Tit. Conditions.

If a man holds three ſeverall Mannors of three ſeverall Lords in Knight ſervice, and every of them of equall value; he cannot make his will of two of the Mannors, leaving the third

See Cook upon Lit. Mannor to the Heir; but of two parts of every Mannor; for otherwise he shall prejudice the other two Lords, 35 *H:* 8. *B: Testament:* 19.

5 M. 1. Com. 185 Note, by the Doctors of the Civill-Law, and Serjeants of the Common-Law; if a man makes his Testament, and names no Executors, this is no Testament; but yet 'tis a good Will of the Land in it, for those are not Testamentary; but in the first where Executors want, yet the Legacies shall be paid. But if it appears that he made part of the Testament, and not the whole; there the Legacies shall not be paid. And where a man makes a Testament and Executors, and they refuse, yet the Legacies shall be paid; for there is no default in the Testator; and the Testament shall be annexed to Letters of Administration, 37 *H:* 8. *B: Testament* 20.

See Cook upon Lit. Note, for Law by the Chancellor of *England* and Justices, That if the Tenant who holds of the King in Knight service *in capite*, gives all his Land to a Stranger, by act executed in his life, and dyes; yet the King shall have the third part in Ward, and shall have the Heir in Ward if he be within age:

age: And if of full age, he ſhall have *primer ſeſin* of the third part, by vertue of that clauſe in the Stat: *Saving to the King Ward, Primer ſeſin, Livery,* and the like, by which it appears that the intent of the act is, that the King ſhall have as much as if the Tenant had made a will, and had dyed ſeized; yet by all, after that the King is ſerved of his duty of it, the gift is good to the Donee againſt the Heir, 2 *E:* 6. *B: Teſtament* 24. 32 H. 8. ca. 1. Raſt. Wills 2. See H. 10. El.

Note, that 'twas adjudged betwixt *Umpton* and *Hyde*, that the explanation of the Statute of Wills, is not to take effect only from the time of the explanation; but the firſt Stat: which is explaned ſhall be ſo taken *ab initio*: So that the Wills of *Umpton, Gaineſford* and others which are excepted in the explanation, ſhall be taken good by the Stat: of 32 *H:* 8. of Wills which was explaned, 4 *M:* 1. *B: Teſtament:* 26. 32 H. 8. ca. 1 Raſt. Wills 2.

Teſtmoignes, Witneſſes.

The age of Witneſſes in an *Ætate probanda*, is 42 years, *Lecture B: Teſtmoignes* 30. the end.

Titles.

See Tit. Pleadings. Note that a man ſhall make a good title in an Aſſize to ſay, that *J N* was ſeized in Fee to the uſe of *T P*, which *T P* infeoffed the Plaintiff, who was ſeized and diſſeized, &c. without ſhewing what perſon made the Feoffment to the uſe of *T P*, or how the uſe commenced, 36 *H:* 8. *B: Titles* 61.

Travers of Office.

3 H. 7. 3. by Keble Stp. 63. 21 E. 4. 2. by Noting 'Tis ſaid for Law, that none can traverſe, except he makes title to the ſame land in the premiſſes, or cloſe of his traverſe, 22 *H:* 8. *B: Traverſe d' Office* 48.

'Twas found that *J S* dyed ſeized, by which *W S* his ſon comes, and ſaith that the ſaid *J S* in his life was ſeized in Fee, and infeoffed *A B* in Fee, to the uſe of the ſaid *J S* and his Heirs, and dyed; and after by the Stat: of uſes 27 *H:* 8. he was ſeized in poſſeſſion without that that *J S* his father dyed ſeized *pro ut, &c.* and a good traverſe: And a Termor cannot traverſe

verſe an Office by the Common-Law, except it were found in the Office, and then he might have a *monſtrans de droit*, and *ouſter L'main* the King, 29 *H:* 8. *B: Travers d' Office* 50. Stp. 62. See Cook upon Lit.

Where a man ſhall have a Petition, where traverſe, See *Tit: Petition.*

Where the King hath no other title but by falſe Office, there the party who can make title, may traverſe as well againſt the King as againſt the party, if the King had granted it over; but now this is helpt by Stat: 33 *H:* 8. *B: Travers d' office* 51. the end. 35 H 6.61 Laicon accord. 2 E. 6. ca. 8.

Where a Tenure is found of the King *ut de Ducat: ſuo Lancaſtrie*, which in truth is falſe; yet this need not to be traverſed, for the King hath this Duchy as Duke, not as King; and a man ſhall not be put to traverſe but where the Office is found for the King, *ut pro rege Angliæ*, for then he hath a prerogative, and as Duke none, 1 *E: 6. B: Travers d' Office* 53. See Tit: Age.

Non-ſuit or relinquiſhing of a traverſe is peremptory; *contra* of *Non-ſuit* in a Petition; and the Judgement of traverſe is no other, *ſed quod manus domini Regis amoneantur, et quod poſ-* 4 H. 6.13.

ſeſſio

Seſſio reſtituatur to him that traverſed, *Lecture B: Traverſe d' Office* 54.

Travers by, &c.

What thing ſhall be traverſable, what not, See *Tit: Iſſues joynes.*

Action for making falſe clothes in *Bartholomew-Fair*, contrary to the Stat: The other ſaith, that he made them well and truly at *D* in the County of *F* without that that he made them in *Bartholomew-Fair* in *L, pro ut, &c.* and a good Plea, 35 *H:* 8. *B: Travers by, &c.* 368.

See 4 E.6. after. If in Aſſize the Tenant Pleads that his Father was ſeized in Fee, and dyed by Proteſtation ſeized: 'Tis ſaid that the Plaintiff may make title by a ſtranger, without that that the father of the Tenant was ſeized in Fee, &c. 38 *H:* 8. *B: Travers by, &c.* 26. the end.

See Tit. Prerogative. Information in the Chequer: the Defendant Pleads a Plea, and traverſes a materiall point in the information, upon which they are at iſſue; there the King cannot waive this iſſue, as he may in other caſes where the King alone is party without an Informor

supra, by the Kings Attorney and others learned in the Law, 38 *H:* 8. *B: Travers by, &c.* 369.

Tender not traverſable in a Writ of intruſion, *maritagio non ſatisfac:* for the ſingle value, See *Tit: Forfeiture of marriage.*.

Treſpas : The Defendant ſaid, that *J N* was ſeized in Fee, and leaſed to him for twenty one years, and gave colour; the Plaintiff ſaid, that his father was ſeized and dyed ſeized, &c. and he entred and was ſeized untill the Treſpas, *abſq; hoc quod dictus J N aliquid habuit tempore dimiſſionis*, and a bad traverſe ; but he ſhall ſay without that that *J N* was ſeized in Fee *modo & forma prout, &c. in Communebanco*, 4 *E: 6. B: Travers per* 372. See 38. H. 8. before : And Time E. 6. after.

Aſſize. The Tenant makes a barr by a Stranger and gives colour : the Plaintiff makes title by the ſame perſon by which the Defendant made his barr, *ſ:* that *J S* was ſeized and gave in tayl to his father, who infeoffed *W N* who infeoffed the Tenant, upon whom *A B* entred and infeoffed the grandfather of the Plaintiff, whoſe Heir he is in Fee, who dyed ſeized, and the Caſus Cooks and Green.

the Land discended to the Plaintiff, & so he was in in his Remitter, until by the Defendant disseized: And in truth *A B* never entred, nor never infeoffed the Grandfather; and yet 'twas held cleerly, that the Tenant in his barr to the title, cannot traverse the Feoffment of *A B*, but ought to traverse the dying seized of the grandfather of the Plaintiff which remitted him, for this binds the entry of the Tenant, and is the most notable thing in the title, 4 *E: 6. B: Travers per* 154.

See 4 E. 6. before. Trespas. The Defendant said that *J* was seized, and infeoffed him, and gave colour; The Plaintiff may say, that *H* was seized and leased to *J* at will who gave to the Defendant, and *R* re-entered and infeoffed the Plaintiff; he ought to say, without that that *J* was seized in Fee *modo & forma prout, &c. Time: E: 6. B: Travers per* 217. the end.

Place not traversable, See *Tit: Attaint,*

Treason.

See St. 3 B. A Chaplaine had affixed an ancient seal

ſeale to a Patent of non-reſidenee, made by himſelfe, of the part of the King, and was impriſoned in the Fleet for it: And 'twas holden miſpriſion, and no Treaſon, by the Juſtices, and he eſcaped and was not put to death; for 'twas ſaid, That becauſe he did not counterfeit the Kings ſeale, but tooke an ancient ſeale, this is not Treaſon, 37 *H:* 8. *B: Treaſon*, 3. *the end*, 5.

Note, that in *January* this yeere, *H: Howard* Earle of *Surrey*, ſonne and Heir apparent of *Thomas* Duke of *Norfolke*, was attainted of high Treaſon, for joyning the Armes of *England* before the Conqueſt, and other Armes after to his owne Armes; and other pretences againſt the Prince; and hee was tryed by Knights and Gentlemen, and not by Lords; *nec per pares regni*, becauſe that hee was not Earle by creation, but by Nativity as Heir apparent of a Duke, which is no dignity in Law, for if hee had beene of dignitie by creation, and Lord of Parliament, he ſhould be tryed by his Peeres, 38 *H:* 8. *B. Treaſon*, 2.

See 33 H. 8 Tit. Triall.

'Twas agreed that for miſpriſion of Treaſon, or if a man knowing counterfeit

See 2 M 1 after; and ſo 'twas adjudged, M. 4. M. 1.

terfeit money, and imports it out of *Ireland* into *England*, and utters it in payment or the like, a man shall lose his goods for ever, and the profits of his Land, for his life, and shall be imprisoned for term of life, 6 *E: 6. B: Treason* 19. the end.

St. 38. B.

See St. fo. 1. E. fo. 2. H. and fo. 6. A.

Note that it appeares by divers Records and Presidents that these words (*compas or imagine the death of the King*) are large words, for he that maliciously devises how the King shall come to death, by words or otherwise, and doth an act to explain it or the like, this is Treason: And hee who intends to deprive the King, in this is intended the death of the King; *quære* of the depriving, for by *B:* a man may deprive and yet intend no death: And for this cause a Statute was thereof made, *Time H:* 8. & *E: 6.* And the detayner of a Castle, Fortresse or the like, against the King, is levying of warre against him, all which words (levying of warre, and the others afore) are in the Statute of 25 *E: 3.* And adhering to the Enemies of the King, *ibm:* ayding and strengthening them, 1 *M:* 1 *B: Treason*, 24.

1 E. 6. 12. Rast. Treason 18.

See 6 E. 6. before.

'Twas agreed in Parliament that for

for miſpriſion of Treaſon, the Fine uſed to bee the forfeiture of all his goods, and the profits of all his Land for his life, and his body impriſoned *ad voluntatem Regis*, for miſpriſion is finable, 2 *M:* 1. *B: Treaſon*, 25. *the end.*

Note, that if an alien borne of a Countrey which is in amity and peace with this Realme, comes into the Realme with Engliſh Traytors, and levies warre, this is Treaſon in all; *contrary*, if the Country of the alien were in warre againſt *England*, for then the alien may bee killed by Marſhall Lawe, 4 *M:* 1. *B: Treaſon*, 32.

Treſpas.

Note, that in the Regiſter amongſt the Writs of Treſpas, there are many Writs of Treſpas, *quare vi & armis equum ſuum apud D inventum cepit & effugavit, &c.* And ſo ſee that if they be taken in a Common, or other land which is not to the owner of the beaſts, yet he ſhall have Treſpas *vi et armis*, but not *quare clauſum fregit*, 3 *M:* 1. *B: Tenants*, 421. 34 H. 6. 28. 12 H. 8, 2. by Brook.

Tryall.

Tryall.

Peere of the Realme ſhall bee tryed by his Peeres, if hee bee arraigned upon an Indictment; *contrary*, if he be arraigned upon an Appeale, for at the ſuite of parties he ſhall not be tryed by his Peeres: and ſo was *Fines* Lord *Dacres* of the South this yeere, and hanged for Felony, for the death of a man who was found in his company at a hunting in *Suſſex*, 33 *H:* 8. *B: Jurors*, 48. *the end*, *Tryalls*, 142.

10 E. 4 6. by Lit. St. 152. A. See Tit. Corone, and Treaſon.

Note that in a Court Baron the tryall is by wager of Law, but they may bee by Jury *ex aſſenſu partium:* And the Maximes and generall Cuſtomes of the Realme, which is the common-Law, ſhall bee tryed by the Juſtices: And the ſame Law of expoſitions of Statutes; And by the Civill-Law, the Judges have the conſtruction of Statutes likewiſe: But particular Cuſtomes ſhall not bee tried but *per Patriam*, 33 *H:* 8. *B: Trialls*, 143.

12 H 7 18 Fineux accord. D. S. 14, 15 6 and 7 E. 6. Com. 82 D. S. 20.

See 2 M. 1. Com. 117. & 27 H 8 Tit. Enqueſt.

Note that a Biſhop is a Peere of the Realme, and ſhall bee tryed *per pares ſuos*

ſuos upon an arraignment of a Crime, and ſo put in uſe; therefore Knights ſhall be of the Jury, and if not the Panel ſhall be quaſhed; yet ſee 27 H. 8. that the Biſhop of *Rocheſter* was not tryed by his Peers, 2 *M.* 1. B. *Trials* 142. the end.

Variance

Quare Impedit upon a grant *de proximum preſentatione* granted to *I: N.* Gentleman, and in the writ brought by I. *N.* this word [Gentleman] is omitted, and the Defend'. demanded Oyer of the Deed, and had it, and the variance no matter; for the Action of *quare Impedit* is founded upon the diſturbance, and not upon the Deed, as an action of Debt is founded upon the Obligation. 2 *E.* 6. *B. Variance* 109. 4 E. 3. 23 by Finch

Verdict.

Note, That the Court of Common Bench would not permit a Verdict at large in a writ of entry in nature of an aſſiſe: becauſe twas a *Precipe quod reddat*, at which B. admires: for it ſeemeth to him that upon every general iſſue a Verdict at large may be given, 23 H. 8. B. Verdict. 85. Contra in a Formedon. 16. E. 3. Fitz. Verdict. 21. 3 M. 1. Com. 92. 93 See Cokes Rep.

Special Verdict, where the iſſue is upon an *abſque hoc*. See Tit. *Iſſues*, *Joynes*.

Villeinage.

D.S.92. 7.El. com.292 See Coke upon Lit. 3 El.com 235.

If a Villein comes to an Executor, or to a Biſhop, Parſon or the like, in *jure Eccleſiæ*, and he purchaſes Land, the executor enters, he ſhall not have it *jure proprio*, but as Executor, and it ſhall be Aſſets. And if the Biſhop, or the Parſon enters, he ſhall not have it but in *jure Eccleſiæ*, becauſe that they had not the villein in *jure proprio*, but in another right: contrary, if they had had the villein *jure proprio*, 33. H.8. *B. Villeinage* 46.

The King ſhall not have the villein of another in ward: and yet if there be an Ideot, he ſhall have the villein of the other who is ſo Ideot. *Quære*. And the King ſhall have the perquiſite of a villein of another if he hath him as Ideot. *Lecture B. Villeinage* 71.

Vſury

Voucher, See B: Tit. Voucher. 84.

Uſury.

Note that where a man for 100*l.* ſels his Land upon condition, That if the Vendor or his heirs repaies the ſumm *citra feſtum Paſche*, or the like, *tunc prox. futur.* that then he may re-enter, this is not uſury: for he may repay the day before, or any time before Eaſter, and therefore he hath not any gain certain to receive any profits of the Land: and the ſame Law where a deſeiſance, or Statute is made for the repayment *citra tale feſtum*: *E contra*, if the condition be that if the ſaid vendor repays ſuch a day, a year, or two years after, this is uſury: for he is ſure to have the Lands and the Rents, or Profits this year, or theſe two years. And ſo where a Defeiſance, or Statute is made for the repayment *ad tale feſtum*, which is a year or two after, 29. *H.* 8. *B. Uſury* 1.

See 29 H 8. before

If a man Mortgages his land upon defeaſance of repayment to re-enter, by which Indenture the Vendee Leaſes the ſame land to the Vendor for years, rendring rent: there if there be a condition in the leaſe, that if the Vendor repaies the ſumm before ſuch a day, that then the Leaſe ſhall be void: this is not uſury. Otherwiſe if it be to repay ſuch a day certain, a year, or more after. 31. *H.* 8. *B. Uſury* 2.

VVaife.

F. 186. A

Twas agreed, if a man be purſued as a Felon, and he flees, and waives his own goods, they are forfeited, as if they had been goods ſtolne, 37. *H.* 8. *B. Eſtray* 9.

Waſte.

46. E. 3. 21. B. Waſte 48

Twas ſaid for Law, That if a Termor commits Waſte, and makes Executors, and dies, the action of waſte is gone: for it doth not lie againſt his Executors

t for waste done by themselves, & not
r the waste of the Testator: for tis a
mmon Trespas, which is an action
rsonal, and dies with the Person. 23.
.8. B. *Waste* 138.

N.B. 38. Lit. accord. 10. E. 4. 1 See 4. E. 6. after.

Nontenure no plea in waste, *See tit. leadings.*

Twas agreed that Beech of the age f 20 years, nor under 20 years, cannot e cut by Tenant for term of years, or erm of life: for they are of the nature f Timber, and may be Timber, and by is way they shall never grow to be imber, *Time H.8. B. Waste* 134.

Note by *Bromley* Chief Justice: If a an doth waste in Hedge-rows that viron a pasture, nothing shall be reco ered but *locum vastatum*, S. the circuit f the Root, and not the whole pasture; nd by him and *Hales*, Justice: the cut- ng of Beech of the age of ten or eight ears is waste, for they may be timber fter.

See Coke upon Lit See Time H.8. before. & 13. H. 7. 21. by Brian. 48. E. 3. 25 Finch accord. 10 H. 7. 21.

And that where there is a wood, in hich grows nothing but underwood, he Termor cannot cut all. *Contra*, of nderwood, where Beech, Ash, and o- her principall Trees grow amongst hem; for there he may cut all the un- erwood.

And

And a Termor may take Beech, A
es, and the like, which are well seaſ
able, which have been uſed to be fel
every 20, or 16, 14, or 12. years
And by ſome at 26, 27, or 30: years
it be ſeiſonable wood, which is calle
Silva cedua, 4.E.6.B.*Waſte* 136.

See coke upon Lit

Twas holden by the Chief Juſtice
That the racing of a new Frame, whi
was never covered, is not waſte: b
twas agreed, That if a houſe be ruino
for default of any covering at the tim
of the death of the Leſſor, and after th
Tenant ſuffers it to be more ruinou
that of this new Ruin the heir ſha
have an action of Waſte: for this
waſte which continues: for of the de
cay which came in the time of the hei
the heir ſhall have an action of Waſte
è contra, of that which was in the life
his Father, 2. *M.* 1. *B. Waſte* 11
the end.

Writ.

30.H.6. 5. ſee Dier.

Twas in ure in debt againſt I. N. o
C. Yeoman, *alias dictus* I. N. of C. ſo
and heir of *W. N.* and charged him a
heir, that the Writ abated, becau
that he charges him as heir, and he

not

ot named heir in the premiſes, but in e *alias dictus.*

So in Debt againſt I. N. of C. Yeoan, *alias dictus* I. N. of C. Executor the Teſtament of *W. P.* and declares gainſt him as Executor, 24. H. 8. B: *Brief* 418.

Note by *Fitz.* and *Shelley* Juſtices, hat if a man pleads a plea which goes o the action of the Writ, he may chuſe o conclude to the Writ, or to the Actin. 26. *H.* 8. *B. Brief* 405. 492.

Prot. accord. 21. H. 6. 49. 24. H. 6. 8. by Priſot cont.

VVhere a writ brought in ſuch a ame of Dignity, which was loſt by inermarriage, ſhall abate. *See Tit. Noſme.*

FH
MVSEVM
BRITANNICVM

FINIS.

MVSEVM
BRITANNICVM